

Thesis Title

Minimum Wages in Uganda: An analysis of Uganda's Domestic, Regional and International Commitments



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Dedication

To Salim. For everything.

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All credit is due to God, the most gracious, the most merciful.

Plagiarism Declaration

Research dissertation presented for the approval of the Senate in fulfilment of part of the requirements for the degree of Master of Philosophy in Labour Laws in approved courses and a minor dissertation. The other part of the requirement for this qualification was the completion of a programme of courses.

I hereby declare that I have read and understood the regulations governing the submission of Master of Laws dissertations, including those relating to the length and plagiarism, as contained in the rules of this University, and that this dissertation conforms to those regulations.

Signed by candidate

Imran Nakueira

17th February 2014

Date

Abbreviations and Acronyms

CEACR	Committee of Experts on the Application of Conventions and Recommendations
CMP	Common Market Protocol
COFTU	Confederation of Free Trade Unions- Uganda
EAC	East African Community
FES	Friedrich Ebert Stiftung
FUE	Federation of Uganda Employers
ILO	International Labour Organisation
MGLSD	Ministry of Gender Labour and Social Development
MoFPED	Ministry of Finance Planning and Economic Development
NDP	National Development Plan
NEP	National Employment Policy
NOTU	National Organisation of Free Trade Unions
NRM	National Resistance Movement/ National Resistance Army
UGX	Uganda Shillings
UNDP	United Nations Development Programme
UNPF	United National Population Fund
UNHS	Uganda National Household Survey
US\$	United States Dollars
UTGLAWU	Uganda Textiles, Garment, Leather & Allied Workers' Union
SAPs	Structural Adjustment Programs

Abstract

The legal case for having a minimum wage can be situated to the constitutional right to safe and satisfactory working conditions and the right to equal pay for equal work, the right to freedom, and dignity among other rights. The setting of a minimum wage can however can have far-reaching impacts on the economy and society as a whole. It is therefore essential to take into account the likely consequences of any minimum wage policy before it is adopted. This study reviews the factors underlying the absence of a minimum wage in Uganda. By examining the key issues surrounding the minimum wage policy in Uganda, this study establishes Uganda's position on having a minimum wage, scrutinises the viability of this position in light of Uganda's development plans, workers constitutional rights, and conformity to international treaties and conventions. The study concludes with the finding, that Uganda will need to reassess its minimum wage position in order to meet its economic development objectives, to give effect to the Constitution and also satisfy the commitments to its people, regional partners and the international community.

Chapter 1: Introduction and Background

1.1 Introduction

In the year 2014, Uganda will mark 52 years of independence, 51 years since becoming a member of the International Labour Organisation and 30 years since the last minimum wage was set. Uganda is located in East Africa, bordered on the east by Kenya, on the south by Tanzania, on the southwest by Rwanda on the west by the Democratic Republic of Congo and on the north by South Sudan. Uganda is also member of the East African Community (EAC) a regional integration of five partner states comprising of Kenya, Tanzania, Uganda, Rwanda and Burundi.

At independence in 1962, Uganda's economy was doing well and the export sector was very buoyant.¹ In 1971 then Prime Minister, Milton Obote was toppled in a military coup by Army Chief Idi Amin Dada,² whose subsequent actions overturned previous economic gains made in the 1960's.³

Uganda's economy started recovering after the return to power of Milton Obote in 1981.⁴ Even then, reductions in the gross domestic product in 1984 and 1985 reduced the economic gains achieved between 1981 and 1983. When President Museveni's National Resistance Movement (NRM) took power in January 1986, it inherited a wrecked economy, and a politically unstable country.⁵

Today, Uganda is politically stable, though labour conditions are poor.⁶ President Museveni's reforms that produced solid economic growth and dropped inflation rates in the 1990's, unfortunately did not significantly improve the implementation and enforcement of labour legislation.

Many of the key Labour laws in Uganda remained obsolete for the first 20 years of the Museveni regime and were only reluctantly revised in 2006 out

¹ M Atingi-Ego & R K Sebudde 'Uganda's Equilibrium Real Exchange Rate and its Implications for Non-Traditional Export Performance' (2000) 2(1) *Bank of Uganda* 1 at 2.

² BBC News Africa 'Uganda Profile' available at <http://www.bbc.co.uk/news/world-africa-14112446>, accessed on 12 June 2013.

³ Atingi-Ego et al op cit note 1 at 2.

⁴ D C E Chew 'Internal Adjustments to Falling Civil Service Salaries: Insights from Uganda' (1990) 18(7) *World Development* 1003.

⁵ Ibid.

⁶ J J Barya 'Trade Unions, Liberalisation and Politics in Uganda' in B Beckman, S Buhlungu & L Sachikonye (eds) *Trade Unions & Party Politics: Labour Movements in Africa* (2010) 85.

of the need to access the US market under the African Growth and Opportunity Act.⁷ Due to poor funding, the ministry in charge of labour lacks the capacity to adequately supervise employer compliance with labour laws.⁸ And the Industrial Court has been inactive since 2006.⁹

The poor enforcement of protective labour regulations exposes workers to exploitation through poor working conditions, long hours of work and the payment of unduly low wages to mention a few. The minimum wage is a protective labour market regulation tool that ensures workers are not exploited by setting a floor wage-rate below which it is illegal to pay workers. In Uganda, the minimum wage was last set in 1984, and is currently UGX 6000, an amount equivalent to about US\$2.3 per month.¹⁰

Over the past years, several efforts to review this wage have stalled despite the existence of a statutory framework for setting a minimum wage. Fluctuating economic situations including currency devaluations and inflation have diminished the purchasing power of the 1984 minimum wage, to a point where it has become ineffective as a social policy tool.¹¹ This should however be self-evident when the country's minimum wage which is equivalent to US\$ 2.2 a month is contrasted with the rate of US\$ 2 a day as an earning used to categorize persons living in poverty.¹²

The state of poverty in Uganda is ominous, especially when it is considered in the context of the Country's increasing population. In 2012 Uganda's population was estimated at 34.1 million people,¹³ and projected to rise

⁷ Ibid at 99-101.

⁸ Friedrich Ebert Stiftung (FES) & Uganda Labour Resource Centre (ULRC) 'Baseline Survey on the Implementation of New Labour Laws in Uganda: A Case Study Of Kampala Wakiso, Jinja, Gulu and Mbarara Districts' (2011) 19 available at http://www.fes-uganda.org/media/documents/Labour_Study_2011.pdf, accessed on the 8 November 2013.

⁹ Ibid at 9.

¹⁰ The Bank of Uganda Exchange rate as of 31 May 2013 was at 1 USD equal to 2599 Uganda Shillings' available at http://www.bou.or.ug/bou/collateral/interbank_forms/2013/MAY/Major_31May13.html, accessed on 12 June 2013.

¹¹ In May 1987, the Uganda shilling was devalued at 77%; this was followed by numerous discrete devaluations between this period and October 1989. See Atingi-Ego & Sebudde op cit note 1 at 4.

¹² World Bank 'Poverty Overview' available at <http://www.worldbank.org/en/topic/poverty/overview>, accessed on 21 July 2013.

¹³ United Nations Population Fund (UNPF) 'The State of Uganda Population report 2012 by Population Secretariat' available at <http://mail2.unfpa.org/pub/2012>, accessed on 22 July 2013.

above 35 million persons at the end of 2014.¹⁴ Uganda's labour force was estimated at 11.5 million persons in 2010, with 81 per cent of the working population residing in the rural areas.¹⁵ Currently 7.5 million (about 24 per cent) of Ugandans live below the poverty line surviving on income below what is required to meet their basic needs.¹⁶ According to the World Bank's Gini Index, Uganda's gini coefficient in 2009 was 44.3.¹⁷ In such a setting the minimum wage would curb income inequality and act as a redistributive tool by ensuring that such workers receive acceptable wages.

1.2 Statement of the Problem

Uganda aspires to attain socio-economic transformation from a peasant economy to a modern and prosperous economy within 30 years.¹⁸ Uganda also seeks economic growth through strengthening cooperation with its regional partners especially within the East African Community. On 20 November 2009 EAC member states (including Uganda) signed the Common Market Protocol,¹⁹ an agreement allowing for a higher level of economic integration in which member states agree to a number of issues including free movement of workers,²⁰ and harmonization of labour policies, laws and programs.²¹ Uganda is also a member of the International Labour Organisation (ILO) a specialised branch of the United Nations dealing with labour matters and founded on the principles of peace and social justice.

¹⁴ Uganda's population growth rate is 3.2%, at this rate it will grow by over a million people each year- UNPF op cit note 13.

¹⁵ Uganda Bureau of Statistics 'Uganda National Household Survey (UNHS) 2009/2010' 33 available at <http://www.ubos.org/UNHS0910/unhs200910.pdf>, accessed on 12 June 2013.

¹⁶ UNPF op cit note 13 at 5.

¹⁷ The World Bank 'Gini index' available at <http://data.worldbank.org/indicator/NY.GNP.PCAP.CD>, accessed 10 January 2014; also see UNHS 2009/2010 op cit note 15 at 85.

¹⁸ 'Uganda Vision 2040' at (iii) available at <http://npa.ug/wp-content/themes/npatheme/documents/vision2040.pdf>, accessed on 19 January 2014.

¹⁹ East African Community 'About the Protocol' available at <http://www.commonmarket.eac.int/>, accessed on 19 April 2013.

²⁰ Article 10 of the Protocol on the Establishment of the East African Community Common Market (2009).

²¹ Article 12 of the Protocol on the Establishment of the East African Community Common Market (2009).

Accordingly Uganda has ratified a number of ILO Conventions including the Minimum Wage-Fixing Convention No. 26.²²

Despite all these aspirations many Ugandans remain poor with 50 per cent of salaried workers earning less than US\$ 2 a day.²³ While member states in the EAC such as Kenya have a minimum wage, Uganda lacks an effective minimum wage. The minimum wage is also one of the key labour policies that are vital for poverty alleviation. The minimum wage allows the working poor access to decent employment and income through which they can escape the poverty trap. Uganda will need to improve the incomes of its people if it is to transform from a peasant to a modern society. The role designated for the minimum wage in Uganda's transformation goals is not readily known. Wage policy is crucial to socio-economic transformation, it is important to establish how the lack of a minimum wage could affect Uganda's aspirations.

1.3 The Research Question

What is Uganda's position on having a minimum wage and is this position adequate to fulfil Uganda's commitments to its people, regional partners and the international community?

1.4 Aim and Objectives of Study

This study was embarked on with the broad aim of establishing Uganda's position on the minimum wage; assessing the credibility of this position in light of the government's intended objectives and also in view of the country's national, regional and international labour-related policy and legislation. The study will further investigate if the lack of a minimum wage conflicts with the Constitution, EAC Common Market Protocol and obligations incurred by Uganda as a member of the International Labour Organisation.

²² International Labour Organisation (ILO) 'Ratifications for Uganda' available at http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO::P11200_COUNTRY_ID:103324, accessed on 19 April.

²³ ILO Global 'Wage Report 2012/13: Minimum Wages Key to Cutting Working Poverty' (2013) 40 available at http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_193581/lang--en/index.htm, accessed on 21 July 2013.

Specific Objectives

- i. To scrutinize the Uganda's position on setting a minimum wage.
- ii. To highlight the possible underlying interests in the adopted position on the minimum wage
- iii. To assess the credibility of Uganda's position on the minimum wage in light of workers constitutional rights
- iv. To assess Uganda's minimum wage position against the National development plans, ILO Convention 26 and the EAC Common Market Protocol
- v. To provide recommendations on a viable minimum wage position for Uganda

1.5 Rationale for Setting a Minimum Wage

The setting of a minimum wage is often a contentious issue that is bound to generate controversy among the government, workers' representatives and employers.²⁴ The situation in Uganda is not dissimilar, and despite the absence of a minimum wage since the 1980s the minimum wage debate in the country has been uncompromising.

The ILO has defined the minimum wage as

‘the minimum sum payable to a worker for work performed or services rendered, within a given period, whether calculated on the basis of time or output, which may not be reduced either by individual or collective agreement, which is guaranteed by law and which may be fixed in such a way as to cover the minimum needs of the worker and his or her family, in the light of national, economic and social conditions.’²⁵

Uganda's current minimum wage rate of UGX 6000 is out of line with the above definition in light of the fact that economic and social conditions have changed dramatically since the 1980's when this rate was last set. In this regard the minimum wage in Uganda is unable to fulfill its primary

²⁴ C Benassi 'The Implementation of Minimum Wage: Challenges and Creative Solutions' 2 available at http://www.global-labour-university.org/fileadmin/GLU_Working_Papers/GLU_WP_No.12.pdf, accessed on 14 June 2013.

²⁵ ILO 'Minimum Wages: Wage-fixing machinery, application and supervision' Report III (Part 4B) (General Survey), International Labour Conference 79th Session (1992) at 13.

purpose of covering the needs of workers and their families. The setting of a minimum wage has its supporters and skeptics.

Supporters of the minimum wage argue that a minimum wage is needed to protect vulnerable workers from being exploited through unduly low wages by guaranteeing persons a basic income. In effect, by preventing employers from lowering wages, the minimum wage guides the competitive process of a market economy into channels beneficial to the society.²⁶ In Uganda it is argued that, the minimum wage could also provide an affirmative action for women who make up the majority of workers employed in the lowest paying sectors.²⁷

Proponents of the minimum wage further argue that it provides a yardstick against which informal workers would demand a decent pay,²⁸ or a foundation for the demand of a living wage by those in formal employment. A Minimum wage can be used as a tool to alleviate poverty, improve the standard of living of workers, and to reduce income inequality. Levin-Waldman argues that by reducing the income inequality and enabling workers to live in dignity and freedom, the minimum wage becomes an essential ingredient in the maintenance of a democratic society.²⁹

The process for setting a minimum wage also reinforces social dialogue in countries with weak collective bargaining systems,³⁰ and Saget argues,³¹ that ‘...removing minimum wages in developing countries may amount to seriously damaging the quality of social dialogue.’³² The absence of such

²⁶ R E Prasch ‘In Defence of the Minimum Wage’ (1996) 30(2) *Journal of Economic Issues* 391 at 394.

²⁷ Development Research and Training ‘The Minimum Wage in Uganda: An Urgent Call’ DRT Policy Brief 4 (October 2013) 3 available at http://www.fes-uganda.org/media/documents/Final_Policy_Brief_Minimum_Wage_An_urgent_call.pdf, accessed 14 February 2014.

²⁸ J Sender & E von Uexkull ‘A Rapid Impact Assessment of the Global Economic Crisis on Uganda’ (2009) A study supported by the ILO for the Government of Uganda at 70.

²⁹ OM Levin-Waldman *Wage Policy, Income Distribution, and Democratic Theory* (2011) 190.

³⁰ ILO Governing Body ‘Update on Minimum Wage Developments’ (2009) 5 available at http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_101713.pdf, accessed on 14 January 2014 at 9.

³¹ C Saget ‘How to get the maximum out of the minimum wage?’ (2002) 128 *Labour Education Review* 67.

³² According to the ILO, the active involvement of social partners in both the design and operation of minimum wage enforcement regimes is essential to enhance their impact- ILO Governing Body op cit note 30 at 9.

dialogue can result in social strife as workers seek other avenues to express their grievances.

While worker protection and the other benefits highlighted above are of no less importance, the setting of a minimum wage is usually influenced by the effects that such a wage policy would have on the economy. With regard to the economy, it is argued that a minimum wage prevents a fall in the purchasing power of low-wage workers, thereby sustaining overall consumption and increasing productivity, both vital components for economic recovery.³³

On the other hand, critics of the minimum wage argue that the setting of a minimum wage leads to job cuts and increases unemployment, stifles investment and usually benefits the few in employment at the expense of the unemployed majority. Critics of the minimum wage often prefer market flexibility, where wages are determined by the market forces of demand and supply without the need for statutory intervention in setting wages.

Eventually, a number of the arguments for or against minimum wages are founded on economic theory. This study though, is inclusive of a legal perspective in its minimum wage policy assessment. The detailed analysis of the economic theories on minimum wage is beyond the scope of this paper. Even then, it will be necessary to point out some shortfalls, benefits and inconsistencies from these theories. This should not carry the misimpression of an attempt to critic or advance any of the minimum wage theories, but is rather done in the need to assess the practicality and suitability of Uganda's minimum wage position in relation to its intended objectives.

1.6 Research Methodology

The methodology for this study is a comparative approach that uses desk-based research in particular documentary analysis. It compares different approaches to minimum wages from a legal, social and economic perspective in order to make dependable conclusions on the issues discussed. It draws its conclusions from the review and analysis of relevant legal statutes, ILO

³³ ILO Governing Body op cit note 30 at 5.

Conventions, ILO Recommendations, Protocols, textbooks, working papers, journals, and newspaper articles.

Due to the scarcity of literature on the minimum wage subject in Uganda, this study is to a great degree reliant on online sources and reports. These include relevant online reports published by the Ugandan Government; various ILO publications and EAC secretariat online publications relating to the Common Market Protocol.

1.7 Scope of the Study

The study seeks to establish Uganda's position on the minimum wage. The established position or policy on the minimum wage will then be assessed in relation to government's intended objectives and how this position complies with Uganda's;

- a) Domestic Obligations: Uganda's domestic laws, labour policy and poverty eradication plans.
- b) International Obligations: compliance with the ILO Minimum Wage-Fixing Machinery Convention No. 26.
- c) Regional Obligations: The East African Common Market Protocol

The study therefore attempts to review Uganda's minimum wage policy in relation to the above mentioned aspects and based on the findings, suitable recommendations will be advanced.

1.8 Significance of the Study

After three decades without a minimum wage, this study provides a timely assessment of the minimum wage policy in Uganda. The study assess the adequacy of the adopted policy on the minimum wage in light of the country's socio-economic development plans as well as its conformity to domestic and international laws and treaties to which Uganda is bound.

The study is an effort to add to the scarce literature about the minimum wage in Uganda and the legal issues that arise from the lack of a minimum wage.

By providing a comprehensive analysis on the minimum wage in Uganda from a legal, social and economic perspective, this study attempts to form a

basis that could inform future minimum wage policy in Uganda through highlighting the shortfalls in the current situation and suggesting areas for future research.

1.9 Limitation and Challenges

There is limited literature and case law with respect to minimum wages in Uganda. This limitation makes it difficult to compare and contrast some of the adopted interpretations of the legal statutes used in this study. However, this shortfall is mitigated by reference to related cases that deal with similar conceptual matters.

1.10 Overview of the Chapters

Chapter 1 has introduced the problem and its background, highlighting the importance, scope, methodology and structure of the research.

Chapter 2 proceeds by describing the Labour law landscape in Uganda, the overall attitude towards minimum wage, and the minimum wage setting mechanism with the view to understand why the country's minimum wage has not been updated since 1984.

Chapter 3 then assesses Uganda's minimum wage position in light of Uganda's domestic, international and regional obligations in the field of Labour.

Chapter 4 builds on the previous chapter by analysing Uganda's position on minimum wage against the national labour policies and laws with specific attention the national development and poverty eradication.

Finally **Chapter 5** summarises the main findings and makes relevant recommendations regarding the minimum wage in Uganda.

Chapter 2: Uganda's Minimum Wage Position: A Clash of Hopes and Fears

2.1 Introduction

This chapter sets out to establish Uganda's position on the minimum wage. The chapter begins with an overview of Labour legislation in Uganda to sketch the context in which the minimum wage operates. The study then embarks on establishing how the minimum wage rate in Uganda has become obsolete and subsequently ineffective. This investigation delves into the government's perceptions and attitude towards minimum wage legislation, drawn from reactions to past and current efforts to revive the minimum wage. The chapter attempts to describe Uganda's position on minimum wage and conclude on whether this position is by happenstance or deliberate intent.

2.2 Overview of Labour Legislation and Labour Relations in Uganda

The Caravan Porters regulation of 1899 was the first official action to regulate terms and conditions of employment in Uganda.³⁴ In 1900 Uganda formally became a British protectorate, and Britain being one of the main initiators if the ILO undertook to improve labour standards in her overseas territories.³⁵ In Uganda, a Minimum Wage Ordinance (inspired by the 1928 ILO Minimum Wage-Fixing Machinery Convention) was passed in 1934.³⁶ By independence in 1962 Uganda had acquired a good basic framework of labour legislation.³⁷

In 1963 Uganda joined the ILO and has through the years ratified various ILO Conventions and domesticated some of these through its labour laws. Today labour matters in Uganda are under the watch of the Ministry of Gender, Labour and Social Development (hereinafter referred to as the 'Labour Ministry'). The other key stakeholders in the country's labour relations include; the National Organisation of Free Trade Unions (NOTU)

³⁴ B Nicol 'Industrial Relations in Uganda: A Historical Perspective' in U K Dimachi, H D Seibel & L Trachtman (eds) *Industrial Relations in Africa* (1979) 273.

³⁵ Ibid.

³⁶ Nicol op cit note 34 at 276.

³⁷ Nicol op cit note 34 at 275.

established by Decree No. 29 of 1973,³⁸ the Confederation of Free Trade Unions- Uganda (COFTU) and the Federation of Uganda Employers (FUE), which was established in 1958 and registered in 1960 is the sole employer representative body in Uganda.³⁹

By the 1980's, Uganda's labour legislation had become obsolete.⁴⁰ The main laws that needed to be revised included: Employment Decree 1975, Trade Union Decree 1974, Factory Inspectorate Act 1964 and Trades Dispute (Arbitration and Settlement) Act Cap 224.⁴¹ In 1988 the ILO was invited to assist in the revision of Uganda's labour legislation.⁴² Accordingly a commission, with representatives from the Labour Ministry (government), FUE (employers) and NOTU (employees) was established.⁴³ The commission agreed to repeal and revise the outdated labour legislation and make these laws compliant with national and international minimum labour standards.

A technical memorandum was presented to government in 1992 but was never acted upon.⁴⁴ The proposals made by the ILO sought to create new labour rights in the employment relationship as well improve labour dispute settlement process, and expand safety and health rights at work. ⁴⁵

In a separate forum, the Ministry of Finance sought assistance from World Bank in updating its commercial laws which included a brief on labour legislation.⁴⁶ In a move that Barya describes as 'forces of neo-liberalism in government led by President Museveni',⁴⁷ other consultants were engaged by World Bank to update the same labour laws that the Ministry of labour and ILO had already updated. This was done without reference to the work already done by ILO and the social partners. ⁴⁸

³⁸ National Organization of Trade Unions available at www.notu.or.ug, accessed on 12 June 2013.

³⁹ Federation of Uganda Employers (FUE) 'Business Agenda Uganda 2011- 2014' available at www.fuemployers.org, accessed on 12 June 2013.

⁴⁰ FES op cit note 8 at 19.

⁴¹ FES op cit note 8 at 19.

⁴² Barya op cit note 6 at 98.

⁴³ FES op cit note 8 at 19.

⁴⁴ Barya op cit note 6 at 98.

⁴⁵ FES op cit note 8 at 21.

⁴⁶ FES op cit note 8 at 20.

⁴⁷ Barya op cit note 6 at 98.

⁴⁸ FES op cit note 8 at 20.

The World Bank study classified all labour laws under commercial laws under the docket of the Ministry of Finance Planning and Economic Development (MoFPED).⁴⁹ The recommendations made by study commissioned by the World-Bank favoured flexibility for employers and weaker labour laws.⁵⁰ The labour ministry study, on the other hand, opted for affirming various labour rights.

The Labour Ministry, the employers' federation and the trade unions unanimously rejected the World Bank sponsored draft legislations and sought the implementation of the ILO sponsored draft legislation which had been agreed upon earlier.⁵¹ The impasse was resolved through conducting a third study on the labour laws,⁵² supported by the ILO and United Nations Development Programme (UNDP).⁵³ The report from this study was presented to labour ministry, but even though MPs were supportive of the bills, the bills were resented by MoFPED and the President for being 'anti-investor'.⁵⁴

Irrespective of the pleas by unionists and the strong support for the Bills by Labour Ministry, the laws were not passed until nearly after 5 years in 2006.⁵⁵ The passing of the bills was done to meet a US government ultimatum to Uganda to pass all pending labour laws (by March 2006), failing which Uganda would be struck off the African Growth Opportunity Act (AGOA) arrangement.⁵⁶ The key labour laws that were updated included;

⁴⁹ FES op cit note 8 at 20.

⁵⁰ FES op cit note 8 at 20.

⁵¹ FES op cit note 8 at 21.

⁵² FES op cit note 8 at 22.

⁵³ Barya op cit note 6 at 99.

⁵⁴ Barya op cit note 6 at 99.

⁵⁵ Barya op cit note 6 at 99.

⁵⁶ Uganda had taken advantage of the US's African Growth Opportunity Act (AGOA) and as a result the government assisted a team of Sri Lankans set up Apparel Tristar Ltd, a clothing industry employing more than 2000 female workers. However, Tristar refused to recognize a Labour Union (UTGLAWU) representing most of its workers. Tristar claimed that the union had to certify that it was representative of 51% of the workers as stipulated in the old Trade Unions Act that was still binding then. However, upon further agitation by workers for union recognition and bargaining rights, the company dismissed near 300 workers. UTGLAWU reported the matter to the ILO and also sought assistance from the American Federation of Labour- Congress of Industrial Organisation (AFL-CIO). AFL-CIO urged the US government to expel Uganda from the AGOA arrangement. Faced with the ultimatum from the US government, the government mobilized parliament in February 2006. The bills were tabled, debated and passed with minor adjustments in a 'record time of one week. See Barya op cit note 6 at 99-101.

The Employment Act, Occupational Safety and Health Act, Labour Unions Act and Labour Disputes (Arbitration and Settlement) Act of 2006.

The process through which the above labour legislation came to be amended and put into law is expressive of the government's overall attitude towards labour legislation. Unsurprisingly, the pursuit for an effective minimum wage in Uganda mirrors the sequence of events, and obstacles faced (discussed above) in updating key labour legislation in the country.

2.2.1 Overview of Minimum Wage Setting in Uganda

The first Minimum Wages Board in Uganda was set up in 1934 although the first minimum wage order was only implemented in 1950.⁵⁷ Uganda's primary legislation on minimum wage is the Minimum Wages Advisory Boards and Wages Councils Act 1957.⁵⁸ This Act is still in force today, in 2014.

According to the Minimum Wage Act, the Minister may appoint a minimum wages advisory board (hereinafter referred to as the 'Wage Board') to fix a minimum wage for any employees or groups of employees in any occupation.⁵⁹ The composition of the Wages Board should include among other parties, an equal number of employer and employee representatives.⁶⁰

Recommendations made by the Wage Board on minimum wage rates are to be forwarded to the Minister,⁶¹ who can approve the proposals⁶² or return the proposals to the Board with comments.⁶³ Once the Minister approves any wage proposals, they should be published and after thirty days from publication the Minister can submit the proposals to the President.⁶⁴ The

⁵⁷ S Devereux 'Can Minimum Wages Contribute to Poverty Reduction in Poor Countries?' (2005) *Journal of International Development* 899 at 906.

⁵⁸ Minimum Wages Advisory Boards and Wages Councils Act (1957) (hereinafter, the Minimum Wages Act).

⁵⁹ Section 3(1) of the Minimum Wages Act.

⁶⁰ See First Schedule of the Minimum Wages Act.

⁶¹ Section 6(1) of the Minimum Wages Act.

⁶² Section 6(2)(a) of the Minimum Wages Act.

⁶³ Section 6(2)(b) of the Minimum Wages Act.

⁶⁴ Section 6(5) of the Minimum Wages Act.

President may on receipt of any wages regulation proposals accept or vary the proposals and give effect to the proposals, or may reject the proposals.⁶⁵

In 1995 a Minimum Wages Advisory Board was established inter alia to review Uganda's minimum wage which had become ineffective at the time.⁶⁶ The Wage Board consisted of representatives from government, employers and workers.⁶⁷ After extensive consultations with various stakeholders, the Wage Board presented its recommendations to the Minister in charge of labour affairs.

In 1997, the Wage Board reconvened to consider public comments, after which the Board submitted its recommendations to the Minister. These recommendations were presented to the President in 1998. The President however neither rejected nor accepted the recommended minimum wage. A resolution from parliament requiring the President to expedite the process of giving effect to the minimum wage proposals was not heeded. The minimum wage proposals made by the 1997 minimum wage board have never been endorsed to date (2014).⁶⁸

Perhaps it is safe to conclude that the proposed minimum wage recommendations were in effect 'rejected.' Currently, the minimum wage rate of Shs65, 000 proposed in 1997 would now equate to a salary less than US\$ 1 a day.⁶⁹ This figure is also much lower than what unionists are demanding in their revived quest for the minimum wage.⁷⁰ As seen from the discussions below, the minimum wage debate in Uganda has not gone entirely silent.

The oratory quoted in that follow has been selected to highlight the key themes in Government's position on the minimum wage. Unfortunately, there is an abundance of similar statements made by Ugandan government

⁶⁵ Section 6(6) of the Minimum Wages Act.

⁶⁶ M Wandera & M Mwamadzingo 'Uganda: Minimum Wages or Minimizing Wages?' (2002) 128 *Labour Education Review* 90.

⁶⁷ Ibid at 91.

⁶⁸ As noted by the Foundation For Human Rights Initiative (FHRI), The President has been 'consulting' on the minimum wage proposals presented to him since 1997; see FHRI 'The Long Road to Realising Labour Rights in Uganda. 'Monitoring the Implementation of Uganda's New Labour Laws Report for the Period (September 2010- March 2011)' at 23.

⁶⁹ Bank of Uganda Exchange Rate op cit note 10.

⁷⁰ Daily Monitor 'The Minimum Wage Bill 2013' available at <http://www.monitor.co.ug/News/National/The-Minimum-Wage-Bill-2013/-/688334/1762894/-/item/0/-/g5yskkz/-/index.html>, accessed on 1 May 2013.

officials dismissing the minimum wage. The sampling of a few of these statements below has been done out of the need to avoid unnecessary repetition, this small spectrum however still accurately captures the overall attitude of the Ugandan government towards the setting of minimum wages.

2.3 Hopes: Current Efforts to Revive the Minimum Wage

On 21 February 2013, Members of Parliament in Uganda moved a bi-partisan motion seeking to revise the country's minimum wage.⁷¹ According to Worker MP Arinaitwe Rwakajara who led this ambitious campaign,

“The existing legislation on minimum wage is out-dated and lack of one exposes workers to exploitation by their employees and poor working conditions ... we need to have a comprehensive legislation to protect employees.”⁷²

The proposed changes to the obsolete Minimum Wage Act include; the setting of a minimum wage at UGX 250 000 (US\$ 96.2) per month,⁷³ a UGX10 million (about US\$ 3 847)⁷⁴ fine to employers who fail to comply and hefty compensation fees to the affected workers. The draft bill also seeks to have the minimum wage reviewed every 2 years among others aspects.⁷⁵

The draft bills renewed workers' hopes for better working conditions, and temporarily revived the habitually-shelved debate on the minimum wage. According to Mr. Owere Wilson the chairman of NOTU,

‘Our workers have been exploited for years yet they deserve betterwe have over the years made a lot of noise to have a law on minimum wage but the Government has not responded and we feel enough is enough.’⁷⁶

While the above developments are promising, past experience should rouse guarded optimism in relying on the success of the recent efforts to revive the

⁷¹ M Nalugo ‘Parliament Agrees on Motion to Revise the Minimum Wage’ available at <http://www.monitor.co.ug/News/National/Parliament-agrees-on-motion-to-revise-the-minimum-wage/-/688334/1700968/-/ntteguz/-/index.html>, accessed on 12 June 2013.

⁷² Ibid.

⁷³ Bank of Uganda Exchange Rate op cit note 10 at 1.

⁷⁴ Bank of Uganda Exchange Rate op cit note 10 at 1.

⁷⁵ Daily Monitor op cit note 70 at 1.

⁷⁶ Daily Monitor ‘Workers back MPs on Wage Review’ available at <http://mobile.monitor.co.ug/News/Workers-back-MPs-on-wage-review/-/691252/1703554/-/format/xhtml/-/1483nn0/-/index.html>, accessed on 25 May 2013.

minimum wage. The draft Bills would have to be approved by the President before becoming legally binding.⁷⁷

Therefore, any residual optimism on the success of the recent efforts to revive the minimum wage is better placed, not on the expectation that a new wage will be set, but rather on the possible benefits from understanding government's position on the minimum wage through analyzing its responses to such attempts.

This approach is dually helpful; first, it shifts the focus from Uganda's minimum wage position, to the underlying factors that motivate the adoption of such a position or facilitated its manifestation.⁷⁸ Secondly, this approach broadens the narrow goal of merely seeking the establishment of a minimum wage, to broader (and perhaps even more sustainable) realisations such as seeking government's appreciation of the potential benefits of minimum wages. The effectiveness of legislation partly lies in government's attitude and implementation of such regulation.⁷⁹ Therefore, any effective campaign for the setting of a minimum wage in Uganda should be backed by the willingness to understand what drives the government's minimum wage position and the appropriate tools that can be employed to improve or change this position.

2.4 Fears: Government's Reaction to Efforts to Revive the Minimum wage

With all due credit, the recent rhetoric by the Government on the issue of minimum wage has been unambiguous, swift and uncompromising. The State Minister for labour Hon. Mwesigwa Rukutana, in reaction to the above-mentioned minimum wage developments in parliament is quoted as having said,

‘We never wanted to jump into fixing a minimum wage and scare away investors and the already existing jobs. If you fix a minimum wage and there are no jobs, then you have a law that

⁷⁷ Article 91(2) of the Constitution of the Republic of Uganda 1995.

⁷⁸ According to Sunstein, ‘it is necessary to explain behaviour not only by reference to choices but by reference to some account of what underlies choices, or of what choices are for.’ See C R Sunstein *Free Markets and Social Justice* (1997) 5.

⁷⁹ For instance, Uganda's labour laws passed in 2006 under a veil of coercion have been poorly implemented due to the lack of political will from government. See FES op cit note 8.

will remain on paper because employers and employees will reject it.⁸⁰

This statement highlights two main sentiments that are common in many of the opinions from government officials on minimum wage. The First, assertion being that it is premature to set a minimum wage in Uganda. The second assertion being that the setting a minimum wage will inhibit investment. Both concerns are reasonable and warrant ample consideration.

In addressing the first concern, it is worth noting that it is 30 years since the last minimum wages adjustment. Accordingly, it is inapt to describe the current efforts to revive the minimum wage as a premature and rushed action. The word ‘jump’ as used in this context is a pejorative label that relegates any calls for minimum wage to the category of undesired efforts that are uncoordinated with the investment objectives of the country. In essence, the government’s view above is closed to the prospect of having a minimum wage work in line with economic policy. Later discussions in this study clearly illustrate that a minimum wage can indeed be implemented for the benefit of the economy.

The government’s second concern in respect of the ripple-effect that the minimum wage may have on employment is not without justification. Reviewed literature indicates that a very protective labour legislation (and high minimum wages can indeed ‘scare away investors’. In South Africa for instance, youth unemployment for persons aged between 15 to 24 years was estimated at 51 per cent as of March 2012.⁸¹ However, employers consider hiring of school-leavers as a ‘risky investment’ because they see entry level wages as too high compared to the risk and skill levels possessed by school leavers.⁸²

⁸⁰ Daily Monitor op cit note 70 at 1.

⁸¹ South African Reserve Bank ‘Annual Economic Report’ (2012) 23 available at <http://www.resbank.co.za/Lists/News%20and%20Publications/Attachments/5095/AER%202012.pdf>, accessed on 16 March 2013.

⁸² National Treasury ‘Confronting Youth Unemployment: Policy Options for South Africa’ available at <http://www.africaneconomicoutlook.org/fileadmin/uploads/aeo/PDF/Confronting%20youth%20unemployment%20-%20Policy%20options.pdf>, accessed on 16 March 2013. Notably, South Africa has now passed a youth wage subsidy to curb unemployment among the youth. See. Mail & Guardian ‘Zuma signs youth wage subsidy Bill into Law’ <http://mg.co.za/article/2013-12-19-zuma-signs-youth-wage-subsidy-into-law>, accessed February 2014.

While South Africa and Uganda's economies are not entirely identical, both countries have high unemployment rates and can be assumed to be similarly cautious on the impact that the setting of a minimum wage will have on overall investment or job creation.⁸³

Nonetheless, the fear that setting a minimum wage will inhibit investment seems based on the presumption that the minimum wage to be set will be too high for investors to bear. The likelihood of this happening is very limited in the Ugandan context where the minimum wage setting framework involves consultations and agreement between representatives of employers, workers and the government.⁸⁴ Notably, the negative consequences of a minimum wage are usually minimised when social partners are involved prior to their establishment.⁸⁵ In fact, employers who pay a fair wage are likely to support a minimum wage to ensure that there is no unfair competition from competitors who cut costs by paying their workers poorly.

Contrary to expectations, this study found that FUE, the sole employer representatives in Uganda are in support for the setting a minimum wage and have highlighted the lack of a minimum wage among their key challenges and areas that require immediate action.⁸⁶ FUE argues that the low level of wages being paid to workers results in low morale and low productivity and have consequently recommended the establishment of a minimum wage rates that minimise the loss of jobs while preserving international competitiveness.⁸⁷

The most interesting finding of this study was from the review of anecdotal evidence that points to the possibility that the focus on the minimum wage as the key deterrent to investment in Uganda seems fallacious. To arrive at this finding, this study noted that after 30 years without a minimum wage adjustment, Uganda has not transformed to a

⁸³ Noteworthy, unlike Uganda, South Africa's very prescriptive dismissal law is also partly responsible for the cautious hiring approach adopted by employers or potential investors there. In fact Le Roux argues that employment in South Africa could benefit from a little insecurity or 'antifragility'. See R Le Roux 'Employment: A dodo or simply living dangerously?' Inaugural Lecture (2013) University of Cape Town, Faculty of Law.

⁸⁴ Section 4(1) of the Minimum Wage Act.

⁸⁵ ILO Governing Body op cit note 30 at 8.

⁸⁶ FUE op cit note 39 at 5.

⁸⁷ FUE op cit note 39 at 12.

leading investment destination. According to the World Bank Ease of Doing Business Index 2012, a ranking of economies with the most business-friendly regulations, Uganda is ranked 120 out of 185 economies.⁸⁸ (This is a consistent decline from 106 place in 2009). For emphasis, South Africa, which has a minimum wage for most of its sectors, is ranked 39 on the same index.⁸⁹

Relatively connected the above is the evidence that investment can also be inhibited by a number of other factors including; corruption,⁹⁰ delays in setting up business, development of infrastructure, prevailing political situation,⁹¹ among others.

2.4.1 Museveni: Minimum Wage not a priority⁹²

In response to the recent calls for setting the minimum wage, President Museveni during the 2013 Labour Day celebrations is quoted to have said that minimum wage is not a priority and that emphasis should be on lowering the cost of production to attract investors. The President reasoned that

‘...with today’s fewer jobs, an employer can sack you but another person can accept to do the same job at a much lower salary. So, the best option is to have a lot of investors and increase the demand for jobs and the wage will rise.’⁹³

On the outlook, the above statement seems logical, from an economic point of view, there is general consensus on the correlation between demand and

⁸⁸ The World Bank ‘Ease of Doing Business Index’ available at <http://data.worldbank.org/indicator/IC.BUS.EASE.XQ>, accessed on 12 June 2013.

⁸⁹ Ibid at 1.

⁹⁰ According to Bategeka, Corruption in Uganda is very much entrenched that it has rendered the functioning of the Labour market inefficient. See L N Bategeka ‘The Role of the State in Economic Development: Employment Challenges in Uganda’ (2013) *Economic Policy Research Centre* 20. Also see, The Observer ‘Uganda 2nd most Corrupt in EA’ available at http://www.observer.ug/index.php?option=com_content&view=article&id=26323:uganda-2nd-most-corrupt-in-ea-again&catid=34:news&Itemid=114, accessed on 9 July 2013.

⁹¹ The World Bank op cit note 88 at 1, see also FUE op cit note 39 at 8.

⁹² Title is borrowed from Daily Monitor News Article op cit note 70.

⁹³ J Omollo & P Gonza ‘Museveni: Minimum Wage not a Priority’ available at <http://www.monitor.co.ug/News/National/Museveni--Minimum-wage-not-a-priority/-/688334/1766960/-/7rd3t9/-/index.html>, accessed on the 2 May 2013. Also see National Resistance Movement (NRM) ‘Manifesto 2011-2016’ 72 available at <http://mlhud.go.ug/documents/NRM%20Manifesto%202011%20to%2016.pdf>, accessed on 10 February 2014.

supply as expressed by the President.⁹⁴ However, although the statement above seems deductively valid, it is also tainted by circular reasoning. Reviewed literature reveals that the purpose of an effective minimum wage includes protecting workers from unfair wage reductions such as those described by the President above in justifying why a minimum wage is not needed.⁹⁵

Nonetheless, numbers do not lie. The President's concern on the few jobs within the country is line with the current unemployment statistics. For instance only 20% Of the 480,000 students that leave the education system each year find employment.⁹⁶ In a study of 17,000 Ugandans, about half said that getting a job was their top priority.⁹⁷ Many respondents also raised the need for better social protection, especially in the informal sector.⁹⁸ Against this backdrop the President's concern on the current number of jobs and how minimum wage will affect these jobs seems justified.

A number of studies assessing the impact of minimum wage have concluded with that a minimum wages can lead to losses in employment.⁹⁹ However recent literature reviewed presents a mixed picture with some studies recording positive effects on employment following the setting of a minimum wage.¹⁰⁰ According to the ILO, the effects of minimum wages on employment tend to be minimal or even not negative,¹⁰¹ while the

⁹⁴ Even then, caution must be exercised since predictions based on economic theory are often sensitive to varying assumptions.

⁹⁵ For instance, the underlying objective of ILO Convention 26 is to prevent payment of very low wages in industry or certain trades in which no effective arrangement for fixing minimum wages exists. See International Labour Conference op cit note 25 at 3.

⁹⁶ Daily Monitor op cit note 70 at 1.

⁹⁷ A Parisotto 'Why Jobs and Livelihoods Matter' available at http://www.ilo.org/global/about-the-ilo/newsroom/comment-analysis/WCMS_213399/lang-en/index.htm, accessed on 20 May 2013.

⁹⁸ Ibid at 1.

⁹⁹ H Bhorat, R Kanbur & B Stanwix 'Estimating the Impact of Minimum Wages on Employment, Wages and Non-Wage Benefits: The Case of Agriculture in South Africa' (2012) available at <http://kanbur.dyson.cornell.edu/papers/SectoralMinimumWagesSouthAfricaAgriculture.pdf>, accessed on 8 December 2013.

¹⁰⁰ See D Kyloh 'Minimum wages and employment: The positive UK experience' (2002) 128 *Labour Education Review* 80. Also see J Dolado, F Kramarz, S Machin, A Manning, D Margolis & C Teulings 'The Economic Impact of Minimum Wages in Europe' (1996) 11(23) *Economic Policy* 317.

¹⁰¹ ILO Governing Body op cit note 30 at 8.

World Bank notes that overall, in cases where minimum wage have had negative employment effects, the magnitude tends to be small.¹⁰²

Despite the above, this study found the expectation that wages will increase when the number of jobs within the country increases to be based on a spurious correlation. Recent literature indicates that an increase in the number of jobs will not necessarily translate into the simplistic wage increase envisaged by the President.¹⁰³ According to the 2013 World Bank Development report;

‘Jobs do not automatically guarantee sustained improvements in earnings and wellbeing. Working people often remain mired in poverty. In many countries, adults in poor households are more likely to be working than those in non-poor households. The poor are not usually characterized by lack of jobs or hours of work; they often have more than one job and work long hours, but their jobs are poorly remunerated.’¹⁰⁴

Nearly 7.5 million Ugandans live in poverty.¹⁰⁵ Uganda’s annual labour force growth rate of 4.7% is way above the national population growth rate of 3.2%.¹⁰⁶ This should be further contrasted with the broader picture in Asia and sub-Saharan Africa where 600 million new jobs will be needed over the next 15 years to ‘absorb burgeoning working age populations.’¹⁰⁷ Uganda’s youth (national definition, 18 to 30 years) unemployment is the highest in sub-Saharan Africa,¹⁰⁸ with 83% of young people having no formal employment rating.¹⁰⁹

¹⁰² The World Bank ‘Jobs: World Development Report’ (2013) 262 available at <http://econ.worldbank.org/external/default/main?contentMDK=23044836&theSitePK=8258025&piPK=8258412&pagePK=8258258>, accessed on 12 June 2013.

¹⁰³ In Standing’s view, ‘the calls by many public figures for flexibility have been a little more than ill-designed masks for proposals to lower wages or worker protection.’ See G Standing *Global Labour Flexibility Seeking Distributive Justice* (1999) 49.

¹⁰⁴ The World Bank op cit note 102 at 77. Similarly, Schmitt argues that ‘low-wage work is not a clear-cut stepping stone to higher wage work; low-wage workers are not only likely to stay in low wage jobs from one year to the next but are also more likely than workers in higher-wage jobs to fall into unemployment.’ See J Schmitt ‘Low-Wage Lessons’ (2012) *Centre for Economic and Policy Research* 1 at 10.

¹⁰⁵ UNHS op cit note 15 at 74.

¹⁰⁶ UNHS op cit note 15 at 30.

¹⁰⁷ The World Bank op cit note 102 at 77.

¹⁰⁸ UNPF op cit note 13 at 34.

¹⁰⁹ UNPF op cit note 13 at 34.

The statistics above show that if the wages for workers in Uganda are to increase when the number of jobs increases, then this expectation has to be realistically low. But even in the unlikely scenario that the number of available jobs in Uganda was to equal or exceed the number of workers in need of employment, President Museveni's reasoning is still imperfect. In reality, many workers neither possess reliable information on the available employment opportunities or on-going market wage rates,¹¹⁰ nor can they afford to interview for each potential job before making a sound choice and the costs of doing so tend to outweigh the potential benefits.¹¹¹

Furthermore, Ernst et al argue that reasoning such as the above '...is based on an abstractly conceived theoretical labour market' and that does not take into account the recognized inequality in bargaining power that prompted the creation of labour law.¹¹² Labour law emanates from the employment relationship, this relationship, as described by the Late Sir Otto Kahn-Freund is one, 'between a bearer of power and one who is not a bearer of power.'¹¹³ According to Vranken, 'it is this presumption of legal subordination that triggers the employee protective rules of labour law.'¹¹⁴

Placing the concept of unequal bargaining power in this construct leads to some interesting preliminary conclusions; one being that the existence minimum wage would support the vulnerable workers in Uganda who are not in a position to bargain for fair wages. Secondly, it is foreseeable that the increase in demand for labour would not necessarily lead to an increase in wages for un-unionised workers who remain exposed to employers' superior power. Therefore, the proposition that wage-fixing should be left to the dictation of market forces, though theoretically logical, in practice is likely to condemn workers' livelihood to unspecified consequences including the possibility of labouring under perpetual exploitation.

¹¹⁰ A L Goldman 'Cultural and economic perspectives concerning protection of workers' social dignity' in R Blanpain & R Ben- Israel *Labour Law, Human Rights and Social Justice* (2001) 10.

¹¹¹ Ibid.

¹¹² C Ernst & J Berg, ILO 'The Role of Employment and Labour Markets in the Fight against Poverty' (2009) 57 available at <http://www.oecd.org/dac/povertyreduction/43280231.pdf>, accessed on 14 January 2014.

¹¹³ P Davies & M Freedland *Kahn-Freund's Labour and the Law* 3ed (1983)18.

¹¹⁴ M Vranken *Death of Labour Law? Comparative Perspectives* (2009) 45.

Efforts to avert a recurrence of exploitation in Uganda stem from the 1995 Constitution which also sets out to achieve ‘freedom and social justice among other objectives.’¹¹⁵ Disappointingly, with the absence of an effective minimum wage, exploitation in Uganda has been unpreventable. A recent report on one tea estate in Uganda revealed that some workers are paid as low as UGX 1000 (US\$ 38 cents) per day.¹¹⁶ Situations such as this are not helped by the government’s proclaimed approach that wages should be kept low to attract investment.¹¹⁷

Closely related to the above, the 1944 declaration of Philadelphia, the international community recognized that ‘labour is not a commodity.’¹¹⁸ The ILO has further stressed that,

‘Work is part of everyone’s daily life and is crucial to a person’s dignity, well-being and development as a human being. Economic development should include the creation of jobs and working conditions in which people can work in freedom, safety and dignity.’¹¹⁹

The above description highlights social and humanitarian attributes of work which seem to have been conveniently ignored in the government’s arguments against the setting of a minimum wage.¹²⁰ Uganda as an ILO member state bears an onus to uphold the ILO standards that have been developed to ensure the improvement of human life and dignity. Further Legal compliance issues in relation to Uganda’s minimum wage position are discussed in detail in the next chapter.

¹¹⁵ Preamble of the Constitution of the Republic of Uganda, 1995 (hereafter, Ugandan Constitution).

¹¹⁶ M Sebuyira ‘Tea estate workers earn Shs 1,000 a day’ available at <http://www.monitor.co.ug/News/National/Tea-estate-workers-earn-Shs1-000-a-day/-/688334/1926966/-/dgm2ih/-/index.html>, accessed on 1 August 2013.

¹¹⁷ It has been noted that having a minimum wage in Uganda would desist the use of labour exploitation to incentivise investment. See Industrial Global Union ‘Minimum wage needed to push back exploitation in Uganda’ available at <http://www.industrialunion.org/minimum-wage-needed-to-push-back-exploitation-in-uganda>, accessed on 12 June 2013.

¹¹⁸ International Labour Organisation ‘Rules of the Game: a Brief Introduction to International Labour Standards’ (2009) 10 available at http://www.ilo.org/global/publications/WCMS_108393/lang--en/index.htm, accessed on 1st August 2013.

¹¹⁹ Ibid.

¹²⁰ For conceptual distinctions between work and labour, see Standing op cit note 103.

However, the pursuance of higher wages from a social-justice point of view should not be slavish to the inexpedient assumption that ‘wages matter to workers but the structure of labour costs does not matter to employers.’¹²¹ Such an approach, Natrass and Seekings argue, can have a deleterious effect to jobs and threatens the survival of lower-wage labour-intensive industries.¹²²

On the other hand, the government’s pursuit of economic development through a proscriptive approach to worker livelihood and protection seems unsustainable. Ben-Israel cautions that, by fixing predominant attention on the commodity aspect of the employment transaction, the moral basis on which the employer-employee relationship stands is circumvented and erroneously replaced with the market rule the sole regulator of that relationship.¹²³

Undesirably, the approach adopted by labour representatives and government on the minimum wage often continually fails to transcend the conflicting interests held by each party and in effect the possibility of a mutually beneficial minimum wage policy remains obscured. In a more recent address, the President is quoted as having said,

‘Government’s focus is on boosting infrastructural development and not salary increases as demanded by various trade unions... whoever feels unsatisfied can try out employment in organized places like Tanzania, where trade unions achieve most of what they champion for.’¹²⁴

Accordingly, this study submits that the various opinions of government officials on the minimum wage highlighted above, not only symbolize the government’s emboldened conviction on its anti-minimum wage position but also the depressing possibility that this position could be based on a deficient analysis (or a deliberate lack of appreciation) of the true purpose, benefits and consequences of setting a minimum wage.

¹²¹ See N Natrass & J Seekings ‘Institutions, Wage Differentiation and the Structure of Employment in South Africa’ (July 2012) 22 CSSR Working Paper No. 309.

¹²² Ibid at 24.

¹²³ R Ben-Israel ‘The Rise, Fall and Resurrection of Social Dignity’ in R Blanpain & R Ben-Israel *Labour Law, Human Rights and Social Justice* (2001) 4.

¹²⁴ F Musisi ‘There won’t be a pay raise- Museveni’ available at <http://www.monitor.co.ug/News/National/There-won-t-be-pay-raise---Museveni/-/688334/1913940/-/wsOp9fz/-/index.html>, accessed on 1 August 2013.

Barya, notes that the Ugandan government is engrained to a neo-liberal economic policy, which involves dismantling of price controls, retrenchment of public servants and privatization of public enterprises.¹²⁵ This policy has led to redundancies, wage cuts for existing staff and widespread casualisation of labour.¹²⁶ In the advancement of this policy, the setting of a minimum wage (and perhaps the enforcement of labour legislation as a whole) is viewed as unwarranted market interference.

In addition to the above, COFTU has lamented the government's lack of political will to defend workers' interests,

‘The biggest challenge in the country is the fact that leaders do not appreciate the workers’ contribution to the economy...’¹²⁷

This assertion is consistent with the overall view of work as merely as factor of production and wages as a production cost. A case in point, Uganda's Labour Ministry is poorly funded,¹²⁸ and thereby lacks the capacity supervise and effectively enforce labour laws within the country.¹²⁹ In addition to this, there has been previous intimidation of the Industrial Court,¹³⁰ and the reluctance to appoint a judge to this court has rendered it inactive since the year 2006.¹³¹

The scope of this study does not permit an in-depth exploration of the above obstacles, nonetheless, these issues portray the fact that labour issues are of secondary significance to the government of Uganda. Based on the above discussions, this study contends that, it is under the overall abominating attitude towards labour legislation in Uganda, that the minimum wage has become redundant.

2.5 What is the Priority?

Whether the 2013 Minimum Wage Bill will lead to the revision of Uganda's minimum wage is an issue that remains to be seen. Nonetheless, the

¹²⁵ Barya op cit note 6 at 101.

¹²⁶ Barya op cit note 6 at 101.

¹²⁷ See Daily Monitor op cit note 76. See also Sebuyira op cit note 116.

¹²⁸ FES op cit note 8 at 48.

¹²⁹ FES op cit note 8 at 48.

¹³⁰ Barya op cit note 6 at 92.

¹³¹ FES op cit note 8 at 47.

persistent calls for a minimum wage can be credited for coaxing the government to confirm that it does not plan to set the minimum wage and advancing reasons for this position. There are three main trends that can be drawn from the government's reactions to the minimum wage

2.5.1 Interests behind Uganda's position on Minimum Wage

i. Attracting Investors

It is evident from the various statements from the President and government officials above that one of the underlying interests behind the position taken on minimum wage is the need to attract investors. In the 2012 State of the Nation Address the President likened the process of attracting investors to wooing a 'bride'.¹³² The President has on a number of occasions warned trade unionists on hindering investment by being concerned with wage rates. He has cautioned that,

“The MPs and trade unions should attract investors and not chase them away. Workers MPs should help me attract factories and stop those slogans of minimum wage...”¹³³

ii. Creating Jobs

Intimately linked to investment, is the need to create jobs or maximise employment. In the 2013/2014 budget, the Ministry of Finance allocated UGX 25 billion (About US\$96 million) for the youth Venture Capital Fund, a fund through which youth can access funds to start up or boost their business.¹³⁴ This approach is partly intended to reduce the number of job seekers and increase job creators or entrepreneurs among the youth. The

¹³² 'State of the Nation Address 2012' available at http://www.parliament.go.ug/new/images/stories/spotlight/state_add12.pdf, accessed on 6 May 2013.

¹³³ Ibid at 13.

¹³⁴ Ministry of Finance Planning and Economic Development 'The Budget speech, Financial Year 2012-2013' 22 available at http://www.finance.go.ug/index.php?option=com_docman&Itemid=7&task=doc_download&gid=338 accessed on 6 May 2013.

Uganda State House website lists employment creation for youth among the National Priorities.¹³⁵

iii. Economic Growth

Employment and investment are vital to economic development.¹³⁶ The ambitions for economic growth partly motivate Uganda's reluctance to set the minimum wage¹³⁷. On 2 May 2013, the New Vision, a state-owned daily published the findings of an investment survey in the country where 93% of investments surveyed reported that the 'determination of wages and sharing dividends was never interfered with by the government.'¹³⁸

Worker Livelihood?

An ironic connotation embedded in the diverging views held by both government and supporters of the minimum wage is that irrespective of the different ideological sympathies, an interest in worker livelihood lingers within the arguments advanced by unionists, employers and the government. It is clear though that worker livelihood and protection from exploitation has been assigned different priorities. Unionist in Uganda seem to argue that worker protection from exploitation is long overdue while the government seems convinced that labour protection is unaffordable under the current economic situation.¹³⁹

2.6 Conclusion

This chapter set out to establish Uganda's position on the minimum wage. A face-value outlook on government's actions (or lack thereof) on the issue

¹³⁵ See <http://www.statehouse.go.ug/national-priorities/employment-creation-youth-women-and-smes>, accessed on 20 July 2013.

¹³⁶ For an overview of the policy intervention tools for employment creation in Uganda see Bategeka op cit note 90 at 9.

¹³⁷ For a detailed framework of economic growth see 'National Development Plan 2010/11-2014/15' available at <http://ms-hiv-gdc.org/wp-content/uploads/group-documents/24/1334583639-DraftNDPDec42009version.pdf>, accessed on 15 January 2014.

¹³⁸ The timing of the release of this report also seems strategic (perhaps to allay fears from potential investors), following the numerous calls for minimum wage setting during May Day celebrations. See A Mugisa 'Local Investors Beat Foreign Firms in Job Creation' available at <http://www.newvision.co.ug/news/642333-local-investors-beat-foreign-firms-in-job-creation.html>, accessed on 2 May 2013.

¹³⁹ This study however found the government's allusion to working in the Ugandan workers interest, oxymoronic. The government's reasons against the minimum wage seem to justify worker exploitation in the pursuit of economic development.

may reveal an initial evasive and neglectful approach. Or even an outright lack of political will to implement labour legislation as a whole.

However, further examination of events and rhetoric surrounding the minimum wage debate in Uganda reveals the colouration of a deliberate, unrelenting and increasingly explicit anti-minimum wage position from government. This position seems catalysed by fears of the potential negative impact that the setting of a minimum wage will have on the economy. However such fears may be overstated as they are not based on evidence specific to Uganda, but rather seem borne from varying broad perceptions about minimum wages in general.

Regardless of the above, these fears seem to have been cemented by the country's current high unemployment statistics, raising the need to attract investors and the uncompromising desire for economic growth. As a result, the President Museveni has pontificated that a minimum wage in Uganda is unnecessary. Uganda's minimum wage setting legislation gives the President overall authority of endorsing or rejecting the minimum wage.¹⁴⁰ Basing on the discussions above, the setting of a minimum wage in Uganda's near future seems unlikely.

¹⁴⁰ Section 6(6) of the Minimum Wage Act.

Chapter 3: Worlds Apart? The Minimum Wage and Uganda's Commitments

3.1 Introduction

This chapter sets out to make a case for the minimum wage by highlighting and assessing the compliance implications from the lack of a minimum wage in Uganda. This analysis at times necessitated contrasting Uganda's commitments and legislation with the policy proposal that wages should be determined by market forces. The chapter is divided into three major sections, each section begins by outlining the relevant legal provisions for the discussions that follow. The First section is a review of Uganda's minimum wage position in light of the domestic laws; The second section is a review of the lack of a minimum wage in light of Uganda's obligations under ILO Convention 26, while the third section reviews the lack of a minimum wage in light of the East African Common Market Protocol. The chapter concludes with a brief assessment of the adequacy of Uganda's position on minimum wage.

3.2 Domestic Commitments

3.2.1 Uganda's Minimum Wages and Domestic Legislation

The campaign for a minimum wage from a labour rights perspective can be primarily based on article 23 of the United Nations Universal Declaration of Human Rights which accorded everyone the right to favourable conditions of work, and the right to equal pay for equal work among other rights.¹⁴¹ Uganda has conferred the above rights to its people through the 1995 Constitution.

Uganda's 1995 Constitution recognises the people's historical struggles against forces of tyranny, oppression and exploitation and commits to the establishment of socio-economic and political order based on democracy, freedom, and social justice among other principles.¹⁴² The Constitution also

¹⁴¹ United Nations 'United Nations Universal Declaration of Human Rights' (1948) available at <http://watchlist.org/wordpress/wp-content/uploads/Universal-declaration-of-human-rights.pdf>, accessed at 10 February 2014.

¹⁴² The Preamble of the Ugandan Constitution.

protects human dignity,¹⁴³ and aims to guard persons from slavery or servitude.¹⁴⁴ Furthermore, under the Constitution, every person has the right to work under satisfactory, safe and healthy conditions and the right to equal payment for equal work.¹⁴⁵ Parliament is supposed to enact laws giving effect to these rights.¹⁴⁶

The Employment Act No.6, of 2006 is Uganda's primary labour statute that gives effect to many of the constitutional rights that are situated in the context of employment.¹⁴⁷ The Employment Act is complemented by a number of other statutes of which, pertinent to this study is; The Minimum Wages Advisory Boards and Wages Councils Act 1957 (hereafter referred to as the Minimum Wage Act), which outlines the framework for setting minimum wages in Uganda.

According to the Employment Act

'wages' means remuneration or earnings, however designated or calculated, capable of being expressed in terms of money and fixed by mutual agreement or by national laws or regulations, which are payable under an oral or written contract of service for work done or to be done, or for services rendered or to be rendered but excluding any contributions made or to be made by the employer in respect of his or her employee's insurance, medical care, welfare, education, training, invalidity, retirement pension, post-service gratuity or severance allowance.'¹⁴⁸

The Minimum Wage Act defines the minimum wage as

'any remuneration fixed by a wages regulation order;¹⁴⁹ and 'a "wages regulation order" includes any order made by the President under section 6(6) and any order made by the Minister under section 9(4) or 13.'¹⁵⁰

¹⁴³ Article 24 of the Ugandan Constitution.

¹⁴⁴ Article 25 of the Ugandan Constitution, stipulates that no person shall be held in slavery or servitude.¹⁴⁴ This position is re-emphasised in Article 44 of the Ugandan Constitution.

¹⁴⁵ Article 40(1)(b) of the Ugandan Constitution.

¹⁴⁶ Article 40(1) of the Ugandan Constitution.

¹⁴⁷ Other laws that complement the Employment Act include; the Occupational Safety and Health Act 2006, Labour Unions Act 2006 and the Labour Dispute (Arbitration and Settlement) Act 2006.

¹⁴⁸ Section 2 of the Employment Act 6 of 2006 (hereafter, Employment Act).

¹⁴⁹ Section 2(g) of the Minimum Wages Act.

¹⁵⁰ Section 2(i) of the Minimum Wages Act.

The protective attributes inherent in the minimum wage makes its implementation an act of giving effect to the Constitutional rights through guaranteeing workers wages, that allow them to live decent lives, the autonomy to escape from slavery and servitude, live in dignity , as well as ensuring that workers are employed in a safe and satisfactory environment.

While it clear from the definitions above that a minimum wage can be set by the President or the Labour Minister,¹⁵¹ Throughout the Minimum Wage Act, the word ‘may’ is used in the sections empowering the Minister to determine the setting of a minimum wage.¹⁵² This wording clearly indicates that the setting of minimum wages in Uganda is not mandatory but rather initiated at the discretion of the Labour Minister. The lack of a mandatory minimum wage setting framework derives from the fact that a minimum wages is intended to be set only in desirable situations. Under this construct, it can be argued that even though the existence of minimum wages may give effect to the spirit of the Constitution, the absence of one does not necessarily contravene the Constitution or the Minimum Wage Act.

Once the Minister decides to set a minimum wage, he constitutes a wage Board whose minimum wage proposals are presented to the President. The President ‘may’ accept, vary or reject these proposals.¹⁵³ With this discretion, the President was under no obligation to approve the minimum wage proposals made by the 1995 Wage Board. However, a legal issue arises when the President neither accepts nor rejects the minimum wage, as is the case in Uganda.

The debate on whether the President’s failure to approve the minimum wage proposals in the last 16 years amounts to a ‘rejection’ is besides the point in this study. The more crucial aspect is that this scenario brings the validity of section 6(6) of the Minimum Wage Act into question. Seeing that Section 6(6) is partly causative of the relegation of the minimum wage in Uganda to limbo, it is surprising that no legal challenge to the validity of this

¹⁵¹ An overview of Uganda’s Minimum wage-fixing procedure can be found in Chapter 2 of this Study.

¹⁵² Section 3(1) of the Minimum Wages Act.

¹⁵³ Section 6(6) of the Minimum Wages Act.

section has been raised.¹⁵⁴ In the section immediately below, this study attempts to scrutinise whether section 6(6) of the Minimum Wage Act passes constitutional muster.

3.2.2 The Constitutionality of Section 6(6) of the Minimum Wage Act

In practice, the Minimum Wage Act creates a two-step hurdle before minimum wages can be set. The first hurdle involves the discretion of the labour Minister and the other hurdle being the discretion of the President. This structure highlights some of the inadequacies of the Minimum Wage Act. For instance, the Act does not stipulate any criteria for the Minister to follow before deciding on whether or not it is ‘desirable to set a minimum wage.’¹⁵⁵ The Minimum Wage Act also lacks a ‘mandatory’ framework under which the Minister or the President would be compelled to set the minimum wage.¹⁵⁶

This paper contends that section 6(6) is unconstitutional on the basis that it permits the President to frustrate the process of setting a minimum wage. The minimum wage is an important social policy tool for worker livelihood and protection, through permitting the President to wilfully reject the minimum wage proposals, section 6(6) infringes on workers constitutional right to satisfactory working conditions¹⁵⁷ and the right to equal payment for equal work.¹⁵⁸

In addition to the above, section 6(6) is further challengeable on grounds that it infringes on workers’ constitutional right to form or join a trade union for the promotion and protection of their economic social interests,¹⁵⁹ and

¹⁵⁴ Article 50(1) of the Ugandan Constitution permits persons to apply to a competent court for redress with a claim that a fundamental right or freedom guaranteed under the Constitution has been ‘infringed or threatened’. Furthermore, the discretion to set minimum wages has been a hotly contested area in the South African context; see *Free Market Foundation v Minister of Labour & Others* [Case no: 13762/2013] (NGHC), also see *Valuline CC and Others v Minister of Labour and Others* (5642/2011) [2013] 34 ILJ 1404 (KZP).

¹⁵⁵ The implication of this is that workers could be left exploited and helpless as long as the Minister does not personally feel that minimum wages are desirable.

¹⁵⁶ This would be in the sense that where specific and justifiable criteria or conditions have been met the Minister or the President would have no discretion but rather to endorse or approve the proposed minimum wages.

¹⁵⁷ Article 40(1)(a) of the Uganda Constitution.

¹⁵⁸ Article 40(1)(b) of the Uganda Constitution.

¹⁵⁹ Article 40(3)(a) of the Uganda Constitution.

the right to collective bargaining and representation.¹⁶⁰ The composition of the Wage Board includes representatives from government and an equal number of employer and employee representatives.¹⁶¹ The purpose of this is to ensure a tripartite bargaining structure in the formulation of a minimum wage.

Article 20(2) of the Constitution guarantees that the government shall respect, uphold and promote rights and freedoms enshrined in the Constitution. Section 6(6), however negates this commitment by allowing the President to trample on the bargaining framework under the Minimum Wage Act without the need for justification. This unreasonably prevents employers and employees from determining their preferred terms and conditions of employment, a further infringement on the constitutional right to collective bargaining and the right to carry on any lawful occupation trade or business.¹⁶²

It is based on the above infringements that we proceed to assess the validity of section 6(6), this assessment will inevitably rely on the standard set for limiting constitutional rights.¹⁶³ Article 43 of the Constitution provides that rights may be limited if the exercise of such rights prejudices public interest or the rights of other persons. Such limitation should however fall within what is 'acceptable and demonstrably justifiable in a free and democratic society.'¹⁶⁴ The Constitution being the supreme law,¹⁶⁵ section 6(6) would be void to the extent that it is found inconsistent with the standard set by article 43 of the Constitution.¹⁶⁶

Unfortunately, the Constitution does not specify a test for determining whether a limitation of a right satisfies the standard set by article 43.¹⁶⁷ Nonetheless, the Constitutional Court in *Charles Onyango Obbo and*

¹⁶⁰ Article 40(3)(b) of the Uganda Constitution.

¹⁶¹ First schedule (1) of the Minimum Wages Act.

¹⁶² Article 40(2) of the Uganda Constitution.

¹⁶³ Article 43(1) of the Uganda Constitution.

¹⁶⁴ Article 43(2)(c) of the Uganda Constitution.

¹⁶⁵ Article 2(1) of the Uganda Constitution.

¹⁶⁶ Article 2(2) of the Uganda Constitution.

¹⁶⁷ This could inadvertently expose Article 43 to misuse by the government through passing arbitrary laws in the guise of public interest.

*Anor v Attorney*¹⁶⁸ (a case involving the Penal Code's limitation on the freedom of expression), the court relied on the proportionality test in arriving to its decision.

Adopting this approach, it is important to recognise from the outset that minimum wage policies have far-reaching effects on issues of public interest or the rights of other persons. Accordingly, the limitation of the rights exercised within the framework for setting minimum wages is permissible.

We now turn to assessing if the limitation imposed by section 6(6) is proportional and consequently demonstrably justifiable in a free and democratic society.

Section 6(6), does not require the President to give reasons for his decision to reject the minimum wage. In the absence of this, section 6(6) should, as a minimum, outline criteria that the President must satisfy before declining to endorse the minimum wage proposals. Such criteria are not listed either. Furthermore, the Minimum Wage Act does not stipulate any timeframe within which the President may decide on the wage proposals presented to him.¹⁶⁹ These shortfalls are problematic in a democratic society as they, in practice, allow the President's personal opinions or fantasies to unreasonably subordinate workers' constitutional rights.

This amounts to a lack of accountability for the authority accorded to the president under Section 6(6). The Constitution stipulates that all public offices shall be held in the trust of the people,¹⁷⁰ and all persons in positions of leadership and authority shall be answerable to the people.¹⁷¹ This constitutional objective imposes an obligation to the president to reasonably explain the decision to reject the minimum wage proposals. The lack of accountability for the authority granted under section 6(6) renders this

¹⁶⁸ *Charles Onyango Obbo and Anor v Attorney* (case No. constitutional appeal No. 2 of 2002) 2004 available at www.ullii.org/ug/judgment/supreme-court/2004/1, accessed on 15 January 2014.

¹⁶⁹ This unreasonably allows the President an unlimited timeframe without endorsing or rejecting the minimum wage proposal. For instance, the 16 years so far taken since the last minimum wage proposals were presented to the President.

¹⁷⁰ Objective (i) of the Uganda Constitution.

¹⁷¹ Objective XXVI(ii) of the Uganda Constitution.

section unable to meet the threshold set by article 43 for limiting constitutional rights.

The above notwithstanding, section 6(6) also fails the proportionality test when analysed against the minimum wage setting framework set out by the Minimum Wage Act. The minimum wage proposals presented to the President are the product of a tripartite bargaining and consultative process. In effect, the minimum wage proposals are an agreement representing the varying interests of employers, employees and the state. The consequences of the proposed minimum wage are inevitably deliberated upon to the Labour Ministers satisfaction.¹⁷² Therefore section 6(6) inexcusably creates an unnecessary despotic barrier at the final stage of this 'free and democratic' process of minimum wage setting.

Following from the above, this study submits that the lack of a minimum wage in Uganda is partly a result of the cumbersome discretionary process outlined in the Minimum Wage Act. A minimum wage can alternatively be set to through section 9(4) and section 13 of the Minimum Wage Act. However even these sections are not mandatory and are prone to the same shortfalls that befall section 6(6).

Analysing Uganda's minimum wage position from a conceptual perspective of work raises other constitutional issues. To illustrate this, let us consider the government's policy alternative to minimum wage setting- the determination of wages through the free market forces. Article 24 of the Constitution prohibits the subjection of persons to degrading and inhuman treatment.¹⁷³ Applying this article to a minimum wage policy should raise the need to recognise that 'labour is an extension of the workers personality'¹⁷⁴ and that employment transactions have to 'be just and favourable reflecting not only the market value but also the worker's human freedom and dignity.'¹⁷⁵ The position adopted by government, that wages be

¹⁷² Matters of public are bound to be deliberated upon in this structural composition. Furthermore, the Minimum Wage Act allows the Minister to amend or send back the proposals to the Wage Board for further consultations before they are forwarded to the President.

¹⁷³ The Ugandan Constitution.

¹⁷⁴ Ben-Israel op cit note 123 at 4.

¹⁷⁵ Ben-Israel op cit note 123 at 5.

set according to the demand and supply of labour further fails in this regard by being overly focussed on promoting a free market while ignoring that labour is not a commodity that can be ‘inhumanely’ regulated.

3.2.3 Minimum Wages and Employment in Uganda

It is important to exercise caution when making a case for the minimum wage from a labour rights perspective. Minimum wage policies affect those in employment as well as the unemployed. Also the Constitution is the legal backbone of various overlapping objectives and rights. Article 21(1) of the Constitution provides that ‘...all persons are equal before the law in all spheres of political, economic, social... and shall enjoy the equal protection of the law.’¹⁷⁶ This includes juristic persons. In consideration of this, minimum wage policies should strive to strike a balance in the interests of workers, businesses, the unemployed and the public at large.

Regrettably, more than often, the case for the minimum wage is hinged upon the vulnerability of workers in employment with limited consideration of the effects that raising wages will have on jobs or investment, aspects that affect the unemployed.¹⁷⁷ According to Standing, ‘it is the presumption that legislation designed to protect workers may raise unemployment and become counterproductive which has given advocates for flexibility a high profile.’¹⁷⁸

The Constitution provides that the state shall endeavour to fulfil the fundamental rights of ‘all Ugandans’ and ensure that ‘all Ugandans’ enjoy the right, opportunities and access to ‘work’ among other things.¹⁷⁹ Under this context, a minimum wage that unjustifiably results in the exclusion of potential employers or the unemployed from accessing the opportunities in the labour market could as well be in violation of the Constitution.

In addition to satisfying the Constitution, the government has undertaken other commitments on employment through the National Employment Policy

¹⁷⁶ Article 21(2) of the Ugandan Constitution.

¹⁷⁷ On a broader level, Langile argues that labour law is not limited to ‘employees’ but is rather much bigger and should take into account vital public policy issues that bear upon the deployment of human capital. See B Langile ‘Human Freedom and human capital re-imagining labour law for development’ in T Novtz & D Mangan (eds) *The Role of Labour Standards in Development From Theory to Sustainable Practice?* (2011) 37.

¹⁷⁸ Standing op cit note 103 at 49.

¹⁷⁹ Objective XIV (ii) of the Ugandan Constitution.

(NEP). The NEP seeks to create 'productive and decent employment for all women and men in conditions of freedom, equity, security and human dignity'.¹⁸⁰ The main objectives of the NEP include among others; promoting employment creation, increasing productivity, competitiveness and employability of the labour force, as well as to protect the rights and interests of workers in accordance with the existing labour laws and fundamental standards.¹⁸¹

The principles which guide the NEP include social dialogue,¹⁸² compliance with the national, regional and ILO Conventions and other international treaties among others. Uganda, as a ratifying member of ILO Convention 122 is also bound to ensure that there is work for all who are available for and seeking to work.¹⁸³ Closely linked to this is the need for employment-intensive growth in order to expand productive employment and attain decent work for all workers.¹⁸⁴ Keeping in mind Uganda's current unemployment statistics, the cautionary approach adopted by government on setting a minimum wage should not be utterly criticised.

The dilemma here stems from a fact outlined earlier, the actual impacts of minimum wages on employment broadly vary to bear any firm conclusion.¹⁸⁵ It is therefore crucial that the minimum wage policy in Uganda is informed by objective and independent studies that perhaps propose minimum wage rates that are protective of workers and yet simultaneously support employment creation. As Le Roux argues on a different but not entirely unrelated issue, '...employment will neither be preserved nor stimulated by providing too much security.'¹⁸⁶

¹⁸⁰ 'The National Employment Policy for Uganda (NEP)' (2011) 23 available at http://www.Labour_Ministry.go.ug/wp-content/uploads/2011/04/Employment%20policy1blank.pdf, accessed on 15 January 2014.

¹⁸¹ Ibid at 24.

¹⁸² NEP op cit note 180 at 24.

¹⁸³ Article 1(2)(a) of the International Labour Organisation Employment Policy Convention No. 122 (1964) available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C122, accessed on 5 February 2014.

¹⁸⁴ E Van Waeyenberge & H Bargawi 'Macroeconomic policy for "full and productive employment and decent work for all": Uganda Country Study' (2011) Employment Working Paper 91, International Labour Office, Geneva at 17.

¹⁸⁵ See note 100 above.

¹⁸⁶ Le Roux op cit note 83 at 19.

The International Labour Organisation Recommendation 135, concerning Minimum Wage Fixing, with special reference to developing countries reflects the same logic by stipulating that the determination of minimum wages should take into account inter alia; the needs of workers and their families, the cost of living and

‘economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment’¹⁸⁷

The above recommendation is dually significant. First, it seems to validate the priorities (employment creation and economic development) that the government has advanced to explain its reluctance to set a minimum wage. Secondly, the above article confirms the delicate balance that has to be struck between social and economic interests when considering the setting of a minimum wage. If this inference is accurate, then it further leads to some immediately dependable conclusions;

One being that while the government may hold valid reasons for hesitating to set a minimum wage, it has disappointingly failed to strike the balance by neglecting to consider the needs of workers altogether.¹⁸⁸ For instance, like the ILO Recommendation 135, Uganda’s NEP sets out to achieve qualitative (decent work) and quantitative (increased employment) goals that should douse the minimum wage debate and policy with reason to accommodate interests of economic development and social justice.¹⁸⁹ Unfortunately, the government maintains an overbearing inclination to maximise employment (and investment) at the expense of fair wages and minimum working conditions.

Secondly, although it is pertinent to assess the effect that minimum wages will have on the unemployed or the potential start-up businesses, this does not justify the complete lack of the protective cover that the minimum wage provides. Goldman argues that ‘...standards designed to improve

¹⁸⁷ Article 3 of the Minimum Wage Fixing Recommendation 135 of 1970 available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:R135, accessed on 10 January 2014 (Hereafter, Minimum Wage Fixing Recommendation).

¹⁸⁸ Uganda’s minimum wage can no longer guarantee workers minimum needs.

¹⁸⁹ Also see NDP op cit note 137 at 206.

worker social dignity also have a need to establish prohibitions or disincentives respecting the availability of involuntary labour.¹⁹⁰ With Uganda's high unemployment, the minimum wage would also be vital to prevent employers from merely replacing workers with cheap labour at exploitative wage rates in order to cut costs.

Evidently, Uganda's current position on the minimum wage to a large extent falls short of the balance sought by article 21 of the Constitution, the objectives of the NEP and ILO Recommendation 135.

3.3 International Commitments

3.3.1 The ILO Operating Mechanism

The International Labour Organisation (ILO) was officially founded in 1919 as part of the peace resolution reached at the end of World War I. The ILO is founded on the principle of achieving peace and its Constitution recognises that universal and lasting peace can be established only if it is based upon social justice.¹⁹¹ Today the ILO is a well recognised specialised agency of the United Nations with a membership of over 200 states, including Uganda.

To achieve its objectives, the ILO drafts international labour standards through dialogue between governments, employers and workers representatives. The international labour standards set out the basic principles and rights at work and take the form of two main legal instruments; Recommendations or Conventions. While Conventions are legally binding on ratifying member states, Recommendations are not binding but rather provide more detailed guidelines on how Conventions could be applied.¹⁹²

To date, despite the controversy surrounding minimum wage setting, over 100 countries have ratified ILO Conventions regarding minimum wages

¹⁹⁰ Goldman op cit note 110 at 17.

¹⁹¹ The Constitution of the International Labour Organisation and Selected Texts (1919) available at <http://www.ilo.org/public/english/bureau/leg/download/constitution-18092012.pdf>, accessed on 30 December 2013.

¹⁹² See <http://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm>, accessed on 31 January 2014.

while minimum wages have also been established in a number of countries that have not ratified the minimum wage Conventions.¹⁹³

3.3.2 ILO Conventions Ratified by Uganda

On 4th June 1963, Uganda ratified 17 International Labour Organisation (ILO) Conventions including the Minimum Wage-Fixing Machinery Convention, 1928 (No.26).¹⁹⁴ To date, Uganda has ratified 31 ILO Conventions, these include all the 8 Fundamental Conventions, 3 of the 4 Governance Conventions and 20 Technical Conventions.¹⁹⁵ With respect to the main discussions in this study, Uganda has ratified, Forced Labour Convention, 1930; Employment Policy Convention, 1964; and Minimum Wage-Fixing Machinery Convention, 1928. Discussions in this study also refer to the Minimum Wage Fixing Recommendation No.135 of 1970 and Minimum wage Fixing Convention No. 131 of 1970.

According to the Constitution, Uganda's foreign policy objectives shall be based on the 'respect of international law and treaty obligations.'¹⁹⁶ The Constitution further states that Uganda shall actively participate in international and regional organisations that stand for peace and for the well-being and progress of humanity.¹⁹⁷ The obligation to observe signed international treaties also stems from the *pacta sunt servanda* principle outlined in the Vienna Convention on Law of Treaties.¹⁹⁸ The discussions below seek to establish if Uganda's compliance with the binding requirements of ILO Convention 26. This is done by analysing how the Minimum Wage Act gives effect to Convention 26, and how government has in performed its obligations under this Convention.

¹⁹³ World Bank: World Development Report op cit note 102 at 260.

¹⁹⁴ ILO 'Ratifications for Uganda' op cit note 22.

¹⁹⁵ ILO 'Technical Memorandum, Uganda Labour Administration and Inspection needs Assessment' (hereafter ILO LAB/ADMIN) available at <http://www.ilo.org/wcmsp5/groups/public>, accessed on 2 July 2013.

¹⁹⁶ Objective XXVIII (i)(b) of the Ugandan Constitution.

¹⁹⁷ Objective XXVIII (ii) of the Ugandan Constitution.

¹⁹⁸ Article 26 of the Vienna Convention on the Law of Treaties (1969) available at www.worldtradelaw.net/misc/viennaconvention.pdf, accessed January 2014.

3.3.3 Uganda's Compliance on ILO Convention 26

Article 1 (1) of Convention 26 requires ratifying member states to create or maintain machinery for fixing minimum wages.¹⁹⁹ The Minimum Wage Act which sets out the framework for fixing minimum wages. However, this Act has remained unupdated since 1957 and seems to be out of line with some provisions of Uganda's 1995 Constitution. Earlier discussions highlighted the shortfalls created by this lack maintenance of the minimum wage fixing machinery.

Article 2 of Convention 26 allows ratifying member states to decide the scope of application of minimum wages.²⁰⁰ However consultations with organisations of concerned employers and workers (represented equally) are required to precede the decision on minimum wage.²⁰¹ In conformity with the Article 2, the Minimum Wage Act allows the Minister discretion to appoint a minimum wages advisory board and determine its composition as per the requirements above.

The Minimum Wage Act does not apply to members of the Uganda Peoples' Defence Forces, the police force, public officers or persons employed by the government.²⁰² It is also noteworthy that, while the wording of Convention 26 and Recommendation 135 seems to cover a wider scope,²⁰³ the Minimum Wage Act only refers to 'employees'.²⁰⁴

The Employment Act, defines an employee as

'any person who has entered into a contract of service or an apprenticeship contract, including, without limitation, any person who is employed by or for the Government of Uganda, including the Uganda Public Service, a local authority or a parastatal organisation but excludes a member of the Uganda peoples defence forces.'²⁰⁵

¹⁹⁹ Minimum Wage-Fixing Machinery Convention (1928) available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312171, accessed on 8 December 2013.

²⁰⁰ Article (2) Minimum Wage-Fixing Convention No. 26.

²⁰¹ Article (2) Minimum Wage-Fixing Convention No. 26.

²⁰² Section 1 of the Minimum Wages Act.

²⁰³ Both Instruments refer to the setting of minimum wages for 'workers'.

²⁰⁴ Section 3(1) of the Employment Act.

²⁰⁵ Section 2 of the Employment Act 2006.

While the limitation of scope of the minimum wage to employees is not necessarily in conflict with Convention 26,²⁰⁶ the implications of this could be far-reaching. One determinable implication is that independent contractors operating within Uganda may not be protected by the minimum wage against the excesses of contractual freedom. This scenario may not be worrying given the legally presumed independent nature of contractors vis-a-vis employees. The more serious implication however is the possibility that this could encourage the disguise of employment relationships to circumvent complying with a set minimum wage.²⁰⁷

In light of the above, the avoidance of the term ‘employee’ in Convention 26 and Recommendation 135, could be an indication of the caution needed to be exercised in choosing terminology that could unintentionally limit the scope of protection provided by minimum wage-fixing instruments. Another possible explanation for this could lie in the fact that the concept of employee is quite difficult to define and many labour law systems have left it to the courts to define who is an employee and who is not.²⁰⁸

Article 3(1) of Convention 26 provides that ratifying members of the Convention shall be free to decide the nature and form of the minimum wage-fixing machinery, provided that such measures consult representatives of employers and employees,²⁰⁹ and that the fixed wages are binding on all employers and employees.²¹⁰ Uganda’s Minimum Wage Act seems largely in conformity with this, however, the government’s preference for a free market system sidelines the minimum wage setting framework outlined by the Act.

²⁰⁶ Convention 26 leaves it ratifying member states to determine the extent and coverage of minimum wages.

²⁰⁷ According to Le Roux, the restructuring of employment could include ‘Casualisation’, which dilutes the standard employment relationship or ‘Externalisation’ which involves the provision of goods or services in terms of a commercial contract instead of an employment relationship; R Le Roux ‘The World of Work: Forms of Engagement in South Africa’ (2009) *Development and Labour Monograph series* at 18-19.

²⁰⁸ Vranken op cit note 114 at 45.

²⁰⁹ Article 3(2)(1) of the Ratification of Co26- Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) available at http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312171 accessed 10 January 2014.

²¹⁰ Article 3(2)(3) of Co26- Minimum Wage-Fixing Machinery Convention, 1928 (No. 26).

Accordingly Uganda's position of the minimum wage cannot be easily reconciled with the requirements of article 3(1) of Convention 26.²¹¹

Article 4(1) of Convention 26 requires effective supervision and imposition of sanctions, to ensure that minimum wages are paid while Article 4(2) seeks to ensure that covered workers can recover unpaid minimum wages due to them. The Minimum Wage Act sets out the supervisory mandates and penalties for non compliance with the minimum wage.²¹²

Unfortunately, Uganda's capacity to supervise and implement minimum wages does not meet the requirements of Convention 26. Labour Inspection powers in Uganda are primarily vested in Labour Officers.²¹³ The Employment Act provides that every district is supposed to have a labour officer.²¹⁴ Dissapoiningly, while Uganda adopted a fully fledged and capable labour administration at Independence in 1962,²¹⁵ by December 2010, only 36 labour officers existed out of 112 districts in the country.²¹⁶ Even the few available Labour Officers lack appropriate technical training,²¹⁷ this also contravenes article 7(3) of ILO Convention No. 81 which is also ratified by Uganda.²¹⁸

Uganda's implementation shortfalls mainly originate from the government's decentralisation process that put labour administration matters to the districts which are autonomous from the central government in terms of priorities, resource allocation and hiring staff.²¹⁹ In this situation, the government's reluctance to set the minimum is also supported by a lack of capacity to supervise and enforce the country's labour laws in general.

²¹¹ Furthermore, the preferred free market system for wage setting limits the possibility for employer-employee consultations and conflicts with the notion of a binding wage for all employers and employees.

²¹² See section 14 of the Minimum Wages Act.

²¹³ Section 10(2) of the Employment Act.

²¹⁴ Section 9(5) of the Employment Act.

²¹⁵ Nicol op cit note 34 at 275.

²¹⁶ FES op cit note 8 at 35. Also see NEP op cit note 180 at 19.

²¹⁷ ILO LAB/ADMIN op cit note 195 at 34.

²¹⁸ C185 Labour Inspection Convention, 1947 (No.81) available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTUMENT_ID:312226:NO, accessed on 28 January 2014.

²¹⁹ ILO LAB/ADMIN op cit note 195 at 9.

Article 5 of Convention 26 obliges each member which ratifies the Convention to communicate annually to the International Labour Office on the application of minimum wages.²²⁰ Additionally states are required to report regularly indicating the practical application of the machinery and whether national laws are in conformity with the Convention in question.²²¹ In 2012, the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) which assesses reports made by ratifying member states on different Conventions made the following Observation on Uganda's application of article 1 to 4 of Convention 26:

The Committee has been commenting for several years on the need to readjust the national minimum wage rate which remains unchanged since 1984 at the level of 6,000...in order to be able to fulfil a meaningful role in social policy, the minimum wage should not be allowed to fall below a socially acceptable subsistence level, and that it should maintain its purchasing power in relation to a basic basket of essential consumer goods...take all appropriate measures to reactivate the minimum wage-fixing process based on tripartite consultations.... The Committee understands, however, that the question of setting a new minimum wage has recently been the subject of strong trade union campaigns and vivid parliamentary debate but no concrete progress has been made regarding the revision of the minimum wage.²²²

The above statement summarises the compliance deficiencies that Uganda's position on the minimum wage creates in respect of Convention 26. The statement is also significantly helpful in understanding the ILO's position on the absence of a minimum wage in Uganda.²²³

²²⁰ Also see Article 52(1)(h) of the Ugandan Constitution.

²²¹ The ILO Supervisory System available at

<http://www.ilo.org/indigenous/Conventions/Supervision/lang--en/index.htm>, accessed 10 January 2014.

²²² Observation (CEACR) - adopted 2012, published 102nd ILC session (2013) Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) - *Uganda (Ratification: 1963)* available at http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:3064267,103324,Uganda,2012.

²²³ This is important because, as highlighted earlier, the setting of a minimum wage is not mandatory. For instance, a number of developing countries including Germany and Finland have no minimum wage. These countries however have strong collective bargaining systems which protect the vulnerable employees. In Uganda the collective bargaining system is weak and therefore it is vital that the minimum wage is set by the government.

The preceding paragraphs illustrate that while Uganda has in place the legal framework that seems to satisfy the requirements of Convention 26, the enforcement and regular update of these legal provisions has often been poor and negates their effectiveness and intended purpose. The fact that Uganda has a minimum wage fixing statute and a minimum wage makes it seem compliant to the letter of Convention 26, however the fact that this minimum wage is low and has no social relevance also means that Uganda is non-compliant with the spirit of Convention 26.

3.4 Regional Commitments

3.4.1 Uganda's Minimum Wage and the EAC Common Market Protocol

A complete review of Uganda's position on the minimum wage should also take account the country's commitments to its regional partners. This section is an attempt to contribute in this area. The Consitution of Uganda provides that 'the state shall promote regional and pan-African cultural, economic and political co-operation and integration'.²²⁴ Uganda is a member of the African Union (AU), the Common Market for East and Southern Africa (COMESA), the Intergovernmental Authority on Development (IGAD) and the East African Community (EAC).²²⁵ The discussion below focuses on Uganda's minimum wage position and the country's obligations as a member of the EAC.

The EAC is a regional bloc made of Uganda, Kenya, Tanzania, Rwanda and Burundi. The above partner states ratified the Protocol on The Establishment of The East Afrcian Common Market (CMP). The establishment of the common Mmrktet is in line with the provisions of the EAC treaty and represents the second stage of the regional intergration process.²²⁶

The overall objective of the common market is to benefit partner states by widening and deepening cooperation within the bloc in the economic and

²²⁴ Objective XXVIII(iii) of the Ugandan Constitution.

²²⁵ ILO Technical Memorandum Uganda op cit note 195 at 4.

²²⁶ Protocol on the Establishment of the East African Common Market available at http://www.eac.int/index.php?option=com_docman&task=doc_view&gid=362&Itemid=163, accessed on 17 January 2014.

social fields.²²⁷ The CMP provides for the movement of goods, labour, services and capital and seeks to boost trade and investment and make the region more productive and prosperous.²²⁸ Other objectives include among others;

- ‘...accelerate economic growth and development of the Partner States through the attainment of the free movement of goods, persons and labour, the rights of establishment and residence and the free movement of services and capital;
- strengthen, coordinate and regulate the economic and trade relations among the Partner States in order to promote accelerated, harmonious and balanced development within the Community;
- sustain the expansion and integration of economic activities within the Community, the benefit of which shall be equitably distributed among the Partner States...’²²⁹

In order to achieve the above objectives the EAC partner states agreed to co-operate in, integrating and harmonising their policies in specific areas.²³⁰ Such areas include the labour relations where all partner states agreed to remove restrictions on movement of labour, harmonise labour policies, programs, legislation, among other things. ;²³¹

Article 9 of the EAC Treaty establishes the Council of Ministers which is the policy organ of the EAC.²³² The Council of Ministers is mandated among other things to make regulations, issue directives, take decisions, make recommendations and give opinions in accordance with the provisions of the treaty.²³³ The regulations, directives and decisions of the Council taken in

²²⁷ Article 4(1) of the Protocol on the Establishment of the East African Common Market op cit note 226.

²²⁸ Protocol on the Establishment of the East African Common Market op cit note 226.

²²⁹ Article 4(2) Protocol on the Establishment of the East African Common Market op cit note 226.

²³⁰ Article 4(3) Protocol on the Establishment of the East African Common Market op cit note 226.

²³¹ Article 5(2)(c) Protocol on the Establishment of the East African Common Market op cit note 226.

²³² Article 14(1) of the Treaty Establishing the East African Community (1999) available at http://www4.worldbank.org/afr/ssatp/Resources/HTML/legal_review/Annexes/Annexes%20V/Annexe%20V-11.pdf accessed on 17 January 2014.

²³³ Article 14(3) (d) of the Treaty Establishing the East African Community (1999).

the pursuance of the provisions of the treaty are binding on the partner states.²³⁴

The harmonisation of minimum wage policies in the East African Community is yet to take concrete steps. This study could not find literature indicating that the EAC Council of Ministers has made any regulations or directives in regard to minimum wages. Irrespective of this shortfall, the CMP lays clear objectives against which a preliminary appraisal of Uganda's minimum wage position can be made.

The minimum wage is a central part of labour and employment policy. Basing on the objectives of the CMP, a harmonised minimum wage policy for the EAC can be envisioned. The practicality of the adoption of a single minimum wage within the EAC is an area that warrants an independent study. It is nonetheless apparent that there is need to fastrack the harmonisation of minimum wage policies in the EAC. For instance, during the 2013 May day celebrations, while the President of Uganda took to denouncing the minimum wage, in Kenya, President Uhuru Kenyatta announced a 14% increase in the minimum wage.²³⁵

One foreseeable implication of the disparity in minimum wages within the EAC is that it negates the objective of cooperation and equitable economic benefit. The objectives of the EAC include the promotion of harmonious and balanced development within the community.²³⁶ Such disharmony threatens the very existence of the EAC.²³⁷

In addition to the above, all five member states of the EAC have ratified ILO Convention 26.²³⁸ Against this fact, it is important to note that the drafting of ILO Convention 26 involved efforts to protect enterprises against unfair

²³⁴ Article 16 of the Treaty Establishing the East African Community (1999) op cit note 232.

²³⁵ E Kiggundu 'Minimum Wage: Uhuru, Museveni worlds Apart' available at http://www.observer.ug/index.php?option=com_content&view=article&id=25069&catid=34&Itemid=114, accessed on 31 May 2013.

²³⁶ Article 4(2) Protocol on the Establishment of the East African Common Market op cit note 226.

²³⁷ The Preamble of the EAC treaty recognises that the early EAC dissolved in 1977 partly due to the disproportionate sharing of benefits within the community among partner states.

²³⁸ Ratification of Co26- Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) available at

http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312171 accessed 10 January 2014.

competition at the national and international levels.²³⁹ In a setting of regional economic intergration, significant disparity in wage levels poses great incentive for an unsustainable race to bottom.

Similarly, the five countries of the EAC are all underdeveloped with the majority of people living in rural areas.²⁴⁰ With a similar socio-economic atmosphere within the EAC, there is no immediate justification for Uganda to adopt a minimum wage policy that seeks to compete by compromising, labour legislation intended to protect workers and making 'discounts' to potential investors based on poor working conditions and the incentive to pay unduly low wages.

The CMP allows workers from any partner state to accept employment within any other EAC country. The partner states have already committed to open up their labour markets for mainly Professionals and Technicians and Associate professionals.²⁴¹ The above categories of workers are most likely not to be directly affected by the minimum wage policy. However, with a disconnect in the minimum wage policies among the partner states, it is improbable that member states will open up to the unskilled and semi-skilled workers. Consequently this limits the prospects for deeper integration and the free movement of labour within the EAC.

The implications of Uganda's lack of a minimum wage will have on the EAC are far ranging. The scope of this study does not permit a deeper exploration in this area. The issues highlighted above briefly depict the complications that could arise from Uganda's minimum wage policy within a common market context. It is yet to be seen if Uganda's insistence on anti-minimum wage policy will override compliance with EAC directives and

²³⁹ ILO International Labour Conference 'Recovering From the Crisis: A Global Jobs pact' (2009) 16 available at http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_115076.pdf, accessed on 10 February 2014.

²⁴⁰ JJ Barya & cha Katiba K *Social Security and Social Protection in the East African Community* (2011) 107.

²⁴¹ Annex on the Free Movement f Labour/Workers, available at <http://www.eac.int/commonmarket/movement-of-labour.html>, accessed 10 January 2014.

obligations. However earlier discussions regarding Uganda's compliance diminish positive expectations in this direction.²⁴²

3.5 Analogy: The Role of Corporations

A resounding broad theme from the discussions above is the noncompliance with obligations. This noncompliance is largely motivated by economic ambitions. The clash between the desire for economic interests and the need to uphold social justice seems to replicate at the company level in the form of the a clash between profit maximisation and corporate social responsibility.

One surprising finding noted earlier in this study was the evidence that employer representatives in Uganda are in support of the setting of a Minimum wage.²⁴³ However, this must be interpreted with caution because it doesnot necessarily mean that all employers are in support of a minimum wage. On the contrary, the reality that a number of multinational corporations commit in they company statements to corporate responsibility but in practice do not follow these social comittments should not be undermined.

For instance some South African-based corporations with operations in Uganda, have been listed among the companies that refuse to recognize trade unions,²⁴⁴ a clear violation of workers' rights as laid out in the 1995 Uganda Constitution.²⁴⁵ This is inspite of the fact that such corporations also operate in South Africa where labour legislation is perhaps more comprehensive, protective, and better implemented than Uganda. Similary, evidence from the United States shows that non compliance with labour laws could be becoming a key feature of employers competitive startegy at the bottom of the US labour market,²⁴⁶ yet most low-wage workers are employed by large corporations who are making profits above pre-recession

²⁴² For instance, Uganda has still failed to comply with EAC directive requiring partner states to establish fully fledged ministries responsible for labour and employment. See ILO LAB/ADMIN op cite 195 at 5.

²⁴³ See FUE op cit note 86.

²⁴⁴ Barya op cit note 6 at 102.

²⁴⁵ Article 40(3) (a) of the Ugandan Constitution.

²⁴⁶ See A Bernhardt, M Spiller & N L K Theodore 'Employers Gone Rogue: Explaining Industry Variation in Violation of Workplace Laws' (2013) 66 (4) *ILR Review* 808-832.

levels, can afford higher minimum wage but are sharing those profits only with top executives and shareholders.²⁴⁷

While there is an absence of studies like the above that are specific to Uganda, the common drive to profit maximisation suggests that the same tendencies could be replicated. The role of company law in prohibiting effective corporate responsibility has been highlighted,²⁴⁸ in the case of Uganda, there is need for further research on role of corporations in the achievement of decent employment. What is clear though is that the lack of a minimum wage often leads to worker exploitation, thereby contradicting the values of corporate social responsibility proclaimed by many corporations. This also denies employers the opportunity (or valuable posturing) to build healthy labour relations.²⁴⁹

3.6 Conclusion:

This chapter has attempted to assess Uganda's position on the minimum wage and how this position conforms to domestic labour laws, ILO Convention 26 and the EAC Common Market Protocol.

The discussion above revealed that Uganda's unwillingness to set minimum wages in preference for a free market system interrupted by protective legal impositions is not without understandable reasons. The discussions also highlighted the need for a proportionate balance between achieving economic interests and upholding binding obligations. Uganda has failed to strike the appropriate balance in this regard. As a result, the lack of a minimum wage in Uganda is to a greater extent inconsistent with the country's domestic, regional and International obligations.

²⁴⁷ See National Employment Law Project 'Big Business, Corporate Profits and the Minimum Wage' (2012) *Data Brief* 1.

²⁴⁸ See C Villiers 'Corporate Social Responsibility: Its potential and its limits for labour participation' in T Novitz & D Mangan (eds) *The Role of Labour Standards in Development: From Theory to Sustainable Practice?* (2011).

²⁴⁹ According to Du Toit & R Ronnie 'The Necessary Evolution of Strike Law' in R Le Roux, A J Rycroft and J Glazewski *Reinventing Labour Law: Reflecting on the First 15 years of the Labour relations Act and future Challenges* (2012) - 'in addition to violence, social and racial tensions may be deepened by the invisible exploitation of workers who have no effective channel of resolving their frustrations.'

Chapter 4: The Minimum Wage and Domestic Labour Policies in Uganda

4.1 Introduction

This chapter is an extension of the review of Uganda's minimum wage against the domestic commitments. The scope here is limited to assessing the minimum wage position in light of poverty eradication and national labour policies (National Development Plan and The National Employment Policy). The first section briefly outlines the relevant policy and the discussions that follow analyse the minimum wage policy against Uganda poverty eradication initiatives.

4.2 The National Development Plan

The Constitution of Uganda provides that 'the state shall give highest priority to the enactment of legislation establishing measures that protect and enhance the right of the people to equal opportunities in development.'²⁵⁰

The National Development Plan (NDP) is Uganda's main policy document for development. The NDP seeks to realise Vision 2040, a national objective to transform Uganda from a peasant to a modern and prosperous economy within 30 years. The NDP 2010/11 to 2014/15 is the first in a series of six NDPs that will be implemented to achieve Vision 2040.²⁵¹ The main theme of this NDP is Growth Employment and Socio-Economic Transformation for Prosperity ²⁵²and it includes the following objectives among others;

- '...Increasing household incomes and promoting equity
- Enhancing availability and quality of gainful employment
- Enhancing human capital development
- Strengthening good governance, defence and security...' ²⁵³

The NDP recognises employment as a tool for socio-economic transformation and the need to alleviate poverty as mean to transform the economy. The

²⁵⁰ Objective XI(i) of the Ugandan Constitution.

²⁵¹ NDP op cit note 137 at 1.

²⁵² NDP op cit note 137 at 1.

²⁵³ NDP op cit note 137 at 38-39.

strategy of the NDP is to have an overarching policy that ‘intertwines economic growth and poverty eradication by focussing on the creation of gainful employment.’²⁵⁴ President reemphasised the need for wealth creation at the household level in his New Year message for 2014.²⁵⁵ Other commitments to eradicate poverty in Uganda are depicted in the Millennium Development Goals, The NRM 2011 Manifesto among other documents.

4.3 Uganda’s Minimum Wage and Poverty Eradication

The ILO recommends that Minimum wage fixing should constitute one element in a policy designed to overcome poverty and to ensure the satisfaction of the needs of all workers and their families.²⁵⁶ According to Saget, the major purpose that governments set the minimum wage is to contribute to alleviating poverty.²⁵⁷ Uganda’s National Employment Policy defines poverty as:

‘the state of deprivation of well-being or welfare ranging from lack of basic needs of life such as nutrition, health shelter, education, to lack of human rights and social networks.’²⁵⁸

Currently (2014), 24.5 per cent of Ugandans are poor, corresponding to nearly 7.5 million people, 7.1 million of these are in rural areas.²⁵⁹ Nearly 30% of salaried workers in Uganda earn less than US\$ 1.25 poverty line, this figure rises to 50% if assessed against the US\$ 2 poverty line.²⁶⁰

The dangers of poverty are well known and the link between poverty, employment and economic development is strong.²⁶¹ The 1944 Declaration of Philadelphia recognises that ‘poverty anywhere constitutes a danger to

²⁵⁴ NDP op cit note 137 at 41.

²⁵⁵ HE Yoweri Kaguta Museveni ‘New Year Message’ available at <http://www.statehouse.go.ug/media/speeches/2013/12/31/new-years-message>, accessed 9 January 2014.

²⁵⁶ Article I(1) of Minimum Wage Fixing Recommendation 135.

²⁵⁷ See C Saget op cit note 31.

²⁵⁸ NEP op cit note 180 at viii.

²⁵⁹ UNHS op cit note 15 at 74.

²⁶⁰ ILO ‘Global Wage Report 2012/ 2013: Minimum Wages Key to Cutting Working Poverty’ 40 available at http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_193581/lang--en/index.htm, accessed on 21 July 2013.

²⁶¹ Ernst et al op cit note 112 at 46, argue that the link between economic growth, employment and poverty reduction is a process in which output growth induces an increase in productive and remunerative employment, which in turn, leads to an increase in the incomes of the poor and a reduction in poverty.

prosperity everywhere.²⁶² In addition to this, the 2009 Global Jobs Pact recommends that governments ‘consider options such as minimum wages that can reduce poverty and inequity, increase demand and contribute to economic stability.’²⁶³ Against this background, the role for minimum wages in poverty reduction cannot be overstated.

It is therefore perplexing, that Uganda is dedicated to eradicating poverty, yet it continues to be vehemently dismissive of the minimum wage. The discussions below highlight some possible explanations for this discordance.

It has been argued that ‘employment and the quality of employment are essential to poverty reduction.’²⁶⁴ According to the ILO, poverty reduction, decent work for all should work in harmony with the pledges in the Millennium Declaration.²⁶⁵ The ILO has listed ‘poverty reduction through increasing opportunities for youth employment’ among the priority areas in its decent work program for Uganda.²⁶⁶

According to the NEP, access to decent and more sustainable employment opportunities is ‘the only escape of the poor from the cycle of poverty.’²⁶⁷ Multinational enterprises have contributed to the promotion of employment opportunities and reduction in poverty in Uganda.²⁶⁸ The NEP’s emphasis on decent work and social dignity,²⁶⁹ confirms the link between minimum wages and decent employment.²⁷⁰ According to Ben Israel, the right to social dignity cannot be achieved without state intervention in labour relations.²⁷¹ On this basis, this study argues that a free market

²⁶² Annex (I)(C) Constitution of the International Labour Organisation op cit note 191.

²⁶³ ILO International Labour Conference op cit note 239.

²⁶⁴ See Ernst op cit note 112.

²⁶⁵ ILO ‘Uganda Decent Work Program’ (2007) ILO Office for the United Republic of Tanzania, Kenya, Somalia and Uganda at ii.

²⁶⁶ Ibid.

²⁶⁷ NEP op cit note 179 at 3.

²⁶⁸ T Fayoshin, A Herbert & P Pinoargote ‘Multinational enterprises in the Plantation sector: Labour Relations, employment, working conditions and welfare facilities’ Working Paper No.93 Uganda, International Labour Office-Geneva at 14.

²⁶⁹ See NEP op cit note 179 at 23.

²⁷⁰ The late Nelson Mandela noted that ‘Decent work is about not only the right to survive but to prosper and to have a dignified and fulfilling quality of life; Nelson Mandela’s acceptance address on receiving the Decent Work Research Prize 2007 available at http://www.ilo.org/global/about-the-ilo/multimedia/video/events-coverage/WCMS_083113/lang-en/index.htm, accessed 10 January 2014.

²⁷¹ Ben- Israel op cit note 127 at 2.

‘uninterrupted’ by the minimum wage is unlikely to sustainably reduce poverty or achieve decent work for all.

Uganda’s economy has been growing at a rate of 6.5 per cent in the last two decades²⁷² and is projected to prevail at 7.2 per cent per annum in the coming years.²⁷³ Even in the absence of a minimum wage, Uganda is one of the few sub-Saharan African countries to have halved extreme poverty before the Millennium Development Goal deadline of 2015.²⁷⁴ Such impressive figures appear to downplay the need for minimum wages as a poverty eradication tool in Uganda.

Ironically, the reforms that are credited for the economic recovery in Uganda could also have contributed to an increase in poverty in some respects. For instance these reforms included the abolition of commodity market boards which had been designed to protect the incomes of poor farmers,²⁷⁵ and the collapse of the cooperative movement system which worsened rural poverty.²⁷⁶ It therefore not surprising that Uganda’s success at the macroeconomic front is uneven and has not trickled down to the household level.²⁷⁷ Progress in social human development in Uganda has been modest, hampered by a rise in inequality and increase in poverty between 2000 and 2002.²⁷⁸

²⁷² NEP op cit note 179 at 1.

²⁷³ NDP op cit note 137 at (i).

²⁷⁴ Human Development Report ‘The Rise of the South: Human Progress in a Diverse World’ (2013) 28 available at http://hdr.undp.org/sites/default/files/reports/14/hdr2013_en_complete.pdf, accessed on 17 January 2014.

²⁷⁵ F Golooba-Mutebi ‘Economic Liberalization and Politics in Uganda’ in F Gutierrez & G Schonwalder *Economic Liberalization and Political Violence UTOPIA or Distopia* (2010) 99.

²⁷⁶ DENIVA, Uganda: Trade Liberalisation and its impact on poverty, Country Background Paper Final Report. July 2005 Page 3; also see H A Mrema ‘Uganda: Starting all over again’ in P Develtere, I Pollet & F Wanyama (eds) *Cooperating Out of Poverty: The Renaissance of the African cooperative movement* (2009) 153-174.

²⁷⁷ NEP op cit note 179 at 13.

²⁷⁸ K I B Kabanankye, A E K Kabanankye, J Krishnamurthy & D Owomugasho ‘Economic Growth, Employment, Poverty and Pro-Poor Policies in Uganda’ (2004) Issues in Employment and Poverty Discussion Paper 16, International Labour Office, Geneva at 19 available at http://www.ilo.org/wcmsp5/groups/public/@ed_emp/documents/publication/wcms_120732.pdf, accessed on 15 February 2014.

Economic growth for sustainable development should be equitable.²⁷⁹ The NEP,²⁸⁰ NDP,²⁸¹ and the NRM Manifesto 2011-2016 commit the government to ensuring ‘prosperity for all.’²⁸² This captures an obligation to ensure that all Ugandans equitably benefit from the country’s economic growth. To achieve this commitment, the existence of a minimum wage would play a positive role by curbing the income inequality. According to the 2013 Human Development Report, ‘growth accompanied by high or rising inequality generally involves slower advances in human development, poor social cohesion and slow reduction in poverty.’²⁸³ As noted by Ernst et al, ‘...if inequality had not increased in Uganda between 1992 and 2002, the poverty rate would have been 8 percentage points lower.’²⁸⁴

The above literature indicates that despite Uganda’s economic success, the lack of a minimum wage has mitigated the realisation of optimal benefits and the continued absence of a minimum wage may continue to diminish the prior gains on poverty reduction. On an encouraging note though, anecdotal evidence suggests that the Ugandan government seems to have recognised the inadequacies of a purely economic approach to sustainable development. An indication of this is the switch from the Poverty Eradication Action Papers which were purely administered by the Ministry of Finance,²⁸⁵ to the NDP which includes an avenue through which the labour Ministry contributes.²⁸⁶ In addition to the above, the NDP and the NEP commit the government to the implementation of labour legislation.²⁸⁷

One unexpected finding of this study is that the NDP explicitly lists the setting of a minimum wage as an intervention tool under its strategies to

²⁷⁹ In addition to this, Article XII (ii) of the Ugandan Constitution requires the state to take necessary measures to bring about balanced development of the different areas of Uganda and between the rural and urban areas.

²⁸⁰ See NEP op cit note 179.

²⁸¹ See NDP op cit note 137.

²⁸² See NRM 2011-2016 Manifesto op cit note 93.

²⁸³ Human Development Report op cit note 278 at 77; In 2013 Uganda was ranked number 161 out of 182 Countries on the Human Development Index, a significant drop when contrasted with the rank of 146 in 2004. Human Development Report op cit note 278 at 146.

²⁸⁴ Ernst et al op cit note 112 at 48.

²⁸⁵ S Canagarajah & A Van Dienen ‘The Poverty Reduction Strategy Approach Six Years on: An examination of Principles and Practice in Uganda’ (2011) *Development Policy Review* 29 (s1): 135-156 at 137

²⁸⁶ ILO LAB/ADMIN op cit note 84 at 6.

²⁸⁷ NDP op cit note 137 at 206.

achieve social-economic transformation.²⁸⁸ The NDP commits to government to establish a means of social-economic transformation through reducing poverty, ensuring decent incomes for workers, improved productivity and increase in aggregate demand for goods and services.²⁸⁹ This finding is significant though its implications are not distinctly clear. While the above statement should confirm the role designated for the minimum wage in Uganda's development plans, in practice this could also be mere symbolism not back by true intent of implementation.²⁹⁰

On the other hand, the inclusion of a minimum wage in the NDP could imply the government's recognition that the setting of a minimum wage can be a 'means to' and not necessarily a product of economic development. However, given the government's current position on the minimum wage, it is difficult to tell which of the above scenarios is more plausible. The key paradox here is that Uganda has partly based its socio-economic transformation strategy on the minimum wage, while it continues to justify its anti-minimum wage position with the claim that setting a minimum wage will impede economic development.

The Constitution of Uganda requires the state to adopt an integrated and co-ordinated planning approach.²⁹¹ The above inconsistencies however indicate that government's position on the minimum wage is not in coordination with the NDP and the NEP. Perhaps Uganda's economic development aspirations continue to allure government to evade its own labour policy commitments. But if this is the case, and if the very intensity with which the government contests the minimum wage is an indication of the importance to achieve economic development, then it is surprising that the government views the minimum wage merely as a cost of production, and not a source of demand and increased productivity, which are contributing factors to economic development. As emphasised by the ILO Director-General Guy Ryder;

²⁸⁸ NDP op cit note 137 at 207.

²⁸⁹ Ibid at 207.

²⁹⁰ For instance the President has endorsed the NDP despite his public dismissals of calls to set the minimum wage.

²⁹¹ Objective XII(i) of the Ugandan Constitution.

‘Minimum wages help protect low-paid workers and prevent a fall in their purchasing power, which in turn hurts domestic demand and the economic recovery... a decent wage is one of the simplest and most direct ways of preventing a rise in working poverty.’²⁹²

In practice though, the implementation and effectiveness of the minimum wage as a poverty alleviation tool is more complex. Although it is beyond the scope of this paper to thoroughly deal with these complexities, this study highlights some of the challenges that arise in the context of setting a minimum wage for poverty reduction. We now turn to briefly outline the practicality of the minimum wage in reducing poverty.

The practicality of a minimum wage as poverty reducing tool is challenged along two broad lines; the ‘effects’ and ‘scope’ of the minimum wage. The effects being that minimum wages increase the costs of production thereby forcing employers to shed jobs and leaving workers who lose their jobs exposed to poverty. Secondly, it is argued that the scope of a minimum wage in developing countries is limited to protecting the workers in formal employment and not the poorest workers who are mostly in the informal economy.²⁹³

From a practical point of view, Saget contends that for minimum wages to positively affect the standards of living of workers and their families, such wages must meet three conditions. First, workers entitled to receive the minimum wage must not lose their jobs due to the minimum wage; Secondly, employers have to comply with the minimum wage, and lastly, no increase in prices should follow the rise in the minimum wage.²⁹⁴ The dilemma arises from the practical reality that ‘...setting the minimum that it can reduce poverty only if it is high and if it is high, it is unlikely that any of

²⁹² ILO Global Wage Report 2012/ 2013 op cit note 264.

²⁹³ Saget op cit note 31 at 111; On a similar contention, DPRU argues that enforcement of minimum wage laws in the unregulated or informal sector, may be even more beneficial to the poor than minimum wages that apply to formal sector employers- Development Policy Research Unit ‘Minimum Wages, Employment and Household Poverty: Investigating the Impact of Sectoral Determinations’ (2008) *University of Cape Town Development Policy Research Unit* 1 at 65.

²⁹⁴ Saget op cit note 31 at 113.

the above three conditions will be met.²⁹⁵ On the reverse side, having very low minimum wage is more likely to increase compliance from the employers while at the same time ‘...making the effectiveness of the minimum wage debatable.’²⁹⁶

Despite the above challenging dimensions, various studies have come to the notable broad consensus that minimum wages change income distribution in favour of workers earning low wages.²⁹⁷ Perhaps more convincing in Uganda’s case, a study by Devereux came to the conclusion that ‘...the introduction of a binding minimum wage should have poverty-reducing effects within Uganda’s rural labour market with limited negative consequences of disemployment.’²⁹⁸ Findings such as this should be taken into account in the formulation of the minimum wage policy, however, the government’s fixation with a conservative view of the minimum wage as an obstacle to economic development remains closed to such research.

4.4 Conclusion

The analysis of Uganda’s position on the minimum wage in light of governments labour policy commitments and poverty eradication plans reveals some interesting findings that perhaps warrant further examination. The discussions above also suggest that Uganda’s minimum wage position creates an a gap in the implementation of the commitments laid out in the NDP. This will in turn hurt the efforts to alleviate poverty. In the long run, the lack of a minimum wage in Uganda seems to jeopardise the achievement of the country’s economic development and poverty eradication ambitions.

²⁹⁵ Saget op cit note 31 at 113; Similarly, Devereux affirms that making the case for the minimum wage as an anti-poverty measure in Uganda, requires demonstrating that labour markets are not fully competitive, that workers are currently underpaid and that the increase in wages will not cause them to be laid off. See Devereux op cit note 57 at 907.

²⁹⁶ Benassi op cit note 24 at 6; In fact minimum wages in many countries are pegged to the poverty line but this may be ineffective in lifting the working poor from poverty. See Saget op cit note 31 at 112.

²⁹⁷ Herr H, Kazandziska M, Mahnkopf-Praprotnik S ‘The Theoretical Debate about Minimum Wages’ (2009) 6 Global Labour University Working Papers 1 at 23.

²⁹⁸ Devereux op cit note 57 at 911.

Chapter 5: Recommendations and Conclusion

5.1 Summary

This study set out to establish Uganda's position on the minimum wage and to assess the viability of this position against Uganda's commitments. The discussions in the preceding pages attempt to do this. The section immediately below summarise the key findings from the above discussions and make appropriate recommendations.

As established, the lack of a minimum wage in Uganda is due to a wilful government decision largely motivated by the conviction that adopting a minimum wage will setback the country's economic transformation plans. In assessing this position, the need to address government's concerns about the minimum wage became more apparent. Accordingly three concerns were highlighted in assessing Uganda's minimum wage position, these included; the need to attract investment, employment creation and the desire to achieve overall economic development.

The above concerns could be used in a number of respects to hold legitimate disagreements with a minimum wage policy. However, the review of literature that has recently come to light dispels many of the past misconstructions about the effects of minimum wages on employment, investment and economic development. These findings also show that the expected gains from the absence of a minimum wage are often not realised. In other words, the minimum wage is not an impediment but rather a tool to economic development.

From a legal point of view, this study established that government's position on the minimum wage is to a large extent in conflict with the spirit of the Constitution and could be fostered by an unconstitutional clause in the Minimum Wage Act. This position is also out of line with Uganda's commitments to the ILO and the EAC. The credibility of this position is further tainted by the appearance that government has foregone workers' livelihood and minimum working conditions in preference for attracting investment and maximising employment. Such an approach is broadly problematical with issues ranging from unjustifiable infringements on

workers' constitutional rights, violation of ILO commitments under Convention 26 and negating the objectives of the EAC common market protocol.

In addition to the above Uganda's approach to the minimum wage also contradicts the commitments made to its people under the NDP and the NEP. The implication of this is that the absence of a minimum wage could further diminish the success of past poverty reduction efforts in the country and decreases the possibility of achieving Vision 2040.

5.2 Recommendations

Uganda will need to re-examine its theoretical perceptions on the minimum wage if it is to achieve sustainable economic development. Consequently government will have to transcend its rigid positions and move towards appreciating the role that a minimum wage can play as a social policy tool. In this regard the steps taken in the NDP are in the right direction. However there is need for a clear implementation plan regarding the minimum wage as an intervention tool in the achievement of socio-economic transformation.

In order to achieve sustainable economic development or socio-economic transformation, Uganda will need to formulate a wage policy that is able to protect workers from exploitation while maintaining the country's economic competitiveness without compromising its obligations under the Constitution and International Conventions or treaties. Independent studies specific to the concerned workers' trades or sectors that necessitate the setting of a minimum wage could be very useful in informing such policy. Consequently it is important that Uganda conducts routine labour market surveys to enable the country to make data-driven decisions in regard to the impacts of the minimum wage or other labour market policies.

Similarly, there is a need to address the administrative and systemic issues that encumber the revival of the minimum wage. In this regard, Uganda will need to revise the 1957 Minimum Wages Act to bring it in conformity with the 1995 Constitution. For instance Section 6(6) and section 9(4) of the Minimum Wage Act could be amended to make it mandatory for the President and the Labour Minister respectively to give effect to the

minimum wages proposals presented by the Wage Board if such proposals are the product of a framework (or satisfied the criteria) that reasonably safeguards public interest or the rights of other persons.

Back to the issue of obstacles to the minimum wage, Uganda should improve its labour administration by adequately financing the Labour Ministry. There is also a need to facilitate the re-functioning of the Industrial Court and to hire the appropriate number of Labour Officers to address the severe manpower shortage that currently contradicts the requirements of the Employment Act and also increase the awareness on labour laws which is still quite low.²⁹⁹ All the above issues are essential to improving the country's capacity to supervise and enforce the implementation minimum wage once such a wage is set.³⁰⁰

Once the decision to have a minimum wage is taken, the inevitable question that follows is what the ideal minimum wage rate should be. A conclusive response to his question warrants broader and deeper analysis beyond the scope of this study. Nonetheless this paper highlighted the basic factors that must guide the process of effective minimum wage setting. These include; the need to consult employer and employee representatives prior to the setting of a minimum wage. An effective minimum wage figure should also take into account among other issues, the standard of living, the needs of workers and their families, the effect of a minimum wage on employment, on economic development, and the effect that such a wage shall have on the prices of commodities. These highlighted issues provide a firm basis for determining an appropriate minimum wage rate.

5.3 Conclusion

Effectively arguing a case for the minimum wage entails adequately addressing the insecurities that surround minimum wages. In some countries adopt a zero-sum approach by falsely believing that the minimum

²⁹⁹ FES op cit note 8 at 57.

³⁰⁰ Sunstein op cit note 78 at 5, argues that free markets depend on the law for their existence and the notion of laissez-fair is a 'misdescription of what free markets actually require and entail.' Standing seems to confirm this in his argument that no society could exist without modes of regulation and regulatory framework and one of the stupidest terms to come into popularity in the 1980s and 1990s is "deregulation". Standing op cit note 103 at 39.

wage and other protective labour regulations should be weakened as precondition for economic growth.³⁰¹ Contrary to this perception, economic growth policy, standards of living and a minimum wage can be employed to work in harmony.³⁰² As this study suggests there does not have to be a conflict between sustainable economic development and the labour interests. The achievement of social-economic transformation in Uganda depends on the properly prioritising and satisfying labour interest, and a clear designation of the role of the minimum wage.

Similarly, the far ranging benefits from setting a minimum wage should not be obscured by assumed negative impacts. The facts specific to each country, trade or sector should play an overriding factor on the decision on whether to have a minimum wage or not. As this study revealed, such facts should take into account the standards of living of workers, the effects on employment, trade and investment and workers' employment rights.

Having introduced the first minimum wage Ordinance 80 years ago in Uganda (then a British protectorate), perhaps Britain's experience with minimum wage policy can provide a convincing example for Uganda.³⁰³ Like Uganda, Britain was cautious about the setting of a minimum wage and lacked one from the 1980's to 1999. Notably, the 'much-feared negative impacts' failed to materialize following Britain's reestablishment of a minimum wage in 1999. In 2010 this decision to set the minimum wage was considered the most successful government policy of the past 30 years according to British political experts.³⁰⁴

Overall, the threat to Uganda's commitments is not from the calls to set the minimum wage but rather from the absence of one. While it is 30 years since the minimum wage was last set, this time has also presented the

³⁰¹ Some countries could inevitably become unwilling participants to such an approach in periods of economic stress when international monetary financiers demand the weakening of labour laws or lowering the minimum wage rates as a precondition to financing or bailout packages.

³⁰² World Bank Development Report op cit note 102 at 87.

³⁰³ While the economies of Uganda and Britain are definitely too disparate to make a conclusive analogy, the point here is that a minimum wages can have positive effects despite the fears that are often raised prior to their implementation.

³⁰⁴ See www.bbc.co.uk/news/uk-politics-11896971?print=true, accessed on 15 February 2014.

benefit of research and more detailed understanding on the true impacts of setting a minimum wage. This time will not have been lost in vain if Uganda was to reconsider its minimum wage position based on the above findings. Finally, it goes without saying that Uganda should reassess its position on the minimum wage with the aim of having a wage policy that conforms to the national development plans, domestic legislation and the country's commitments to its regional partners and the international community.

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